Government of Canada / Gouvernement du Canada

International Covenant on Civil and Political Rights

Fifth Report of Canada

Covering the period
January 1995 – April 2004

Canada

FOREWORD

The *International Covenant on Civil and Political Rights* was adopted by the United Nations General Assembly on December 19, 1966. Canada acceded to the Covenant on May 19, 1976.

States Parties are required to report to the United Nations on measures they have taken to give effect to the Covenant. Canada's Fifth Report on the *International Covenant on Civil and Political Rights* covers the period of January 1995 to April 2004. It was prepared in close collaboration by the federal, provincial and territorial governments and describes significant measures and initiatives taken by these governments with respect to the Covenant during this period.

Through publication of this report, it is hoped that Canadians will be encouraged to become familiar with the measures adopted in Canada to ensure the implementation of the Covenant and to broaden their understanding of the obligations contracted by Canada through accession to this important international treaty.

Copies of the report, in both official languages, may be obtained free of charge from the Human Rights Program of the Department of Canadian Heritage. This report is also available on the Human Rights Program Web site at: http://www.pch.gc.ca/progs/pdp-hrp/.

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* In geographical order, from east to west

Introduction

1. The present report outlines key measures adopted in Canada from 1995 to April 2004 to enhance its implementation of the *International Covenant on Civil and Political Rights* (the *Covenant*). The report is focused primarily on issues raised by the Human Rights Committee in its Concluding Observations, issued after review of Canada's Fourth Report in 1999, and on significant developments and case law since this review.

2. In order to improve the timeliness and relevance of reporting to UN treaty bodies, effort has been taken to keep this report concise and focused on key issues. To that end, where articles under this Covenant encompass rights included within other conventions to which Canada is a party, information detailed in reports under these other conventions are referred to but, with few exceptions, not repeated in this report.

3. Canada has taken note of the concerns and recommendations raised by the Human Rights Committee. Information pertaining to these concerns can be found in this report under the relevant article of the Covenant.

4. The Concluding Observations of the Human Rights Committee and Canada's previous reports were provided to all federal departments and provincial and territorial governments. Canada's reports are available to the public on the website of the Department of Canadian Heritage at : http://www.pch.gc.ca/progs/pdp-hrp/docs/index_e.cfm.

Consultations with Non-Governmental Organizations

5. The Government of Canada invited 58 non-governmental organizations to give their views on the issues to be covered in the federal portion of the report. One response was received from Focus on the Family Canada (FFC), which has been forwarded to the Human Rights Committee.

6. FFC has expressed concerns with respect to Canada's compliance with the *Covenant* in relation to the following:

- Bill C-13, *An Respecting Assisted Human Reproduction*, which, according to the FFC, does not provide for human dignity and the inherent right to life of all human beings, in particular people with disabilities;
- *An Act to Amend the Criminal Code* that provides for hate crime legislation to include discrimination based on "sexual orientation" and which, according to FFC, poses a serious threat to freedom of thought, conscience and religion and freedom of expression;

- the absence of a federal level ministry tasked with a mandate to ensure that Canadian families are given protection and support; and
- the formulation of legislation that changes the definition of marriage to allow any two persons to marry, including same-sex couples.

Part I

Measures Adopted by the Government of Canada

Article 1: Right to self-determination

7. Canada subscribes to the principles set forth in the *International Covenant on Civil and Political Rights*. Article 1 of the Covenant is implemented without discrimination as to race, religion or ethnic origin. All Canadians have meaningful access to government to pursue their political, economic, social and cultural development.

8. The Government of Canada acknowledges the Human Rights Committee's request for further explanation of the elements that make up Canada's concept of self-determination as it is applied to Aboriginal peoples. As the Government of Canada's concept of self-determination as it may be applied to Aboriginal peoples is continuing to evolve in relation to its ongoing participation in the UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples and other international fora, the Government of Canada will present information on this specific issue at the oral presentation of this report.

9. Information pertaining to the Government of Canada's implementation of the Royal Commission on Aboriginal Peoples and Canada's policy on inherent aboriginal rights is included under Article 27 of this report. Provincial and territorial sections of this report also provide related information with respect to Aboriginal peoples under Article 27.

Article 2: Equal rights and effective remedies

Canadian Charter of Rights and Freedoms

10. The appeal in *Doucet-Boudreau* v. *Nova Scotia (Minister of Education)*[1] pertained to the nature of the remedies pursuant to subsection 24(1) of the *Canadian Charter of Rights and Freedoms* (appropriate and just remedies under the circumstances) that may be granted to uphold the minority-language education rights guaranteed by the Charter. The Supreme Court of Canada ruled that the purposive interpretation of the remedies provided in the Charter requires that the intent of the guaranteed rights and remedies be furthered. In this regard, the courts must grant effective and appropriate remedies that fully and meaningfully protect the rights and freedoms guaranteed by the Charter. The Court also ruled that the superior courts have concurrent, permanent and full jurisdiction to grant remedies that they consider just and appropriate under the circumstances. The Court stated that these remedies include the power to grant injunctions against the executive branch and to monitor the implementation of the remedies ordered.

Specific Concern of the Human Rights Committee

11. In its Concluding observations (paragraph 9), the Committee recommended that human rights legislation be amended to guarantee access to a competent tribunal and effective remedy in all cases of discrimination. The Government of Canada emphasizes that the Canadian Human Rights Commission and Tribunal have a broad mandate with respect to

[1] *Doucet-Boudreau* v. *Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3.

complaints alleging discrimination. The *Canadian Human Rights Act* (CHRA) also provides for a range of remedies at the tribunal disposal.

12. On April 8, 1999, the Minister of Justice announced the establishment of an independent Panel, chaired by Mr. La Forest, a former Justice of the Supreme Court of Canada, to conduct a review of the CHRA. The report was released on June 21, 2000 and contains 165 recommendations covering various issues ranging from significant structural and process changes to the addition of new grounds of discrimination. The Government has undertaken a cost analysis of various structural models, begun consideration of the additional grounds recommended for inclusion in the Act, and consulted with both the Canadian Human Rights Commission and Tribunal to understand the need for and impact of potential changes.

13. In follow-up to the La Forest report, the Canadian Human Rights Commission introduced new process reforms in May 2003 aimed at reducing its chronic backlog of cases and the excessive delays in the complaints process. These reforms include: (1) using Alternative Dispute Resolution in all stages of the complaints process; and, (2) referring some cases to the Canadian Human Rights Tribunal where the claimant will represent himself/herself without Canadian Human Rights Commission assistance.

14. Discussions on the repeal of s.67 of the CHRA - with the goal of ensuring all Aboriginal people, especially women, receive the full protection of the Act - continue in anticipation of the Government of Canada moving forward on CHRA reform.

15. The Committee expressed concerns that there may be gaps between the protection of rights under the Canadian Charter and other federal and provincial laws, and recommended that measures be introduced to ensure the full implementation of the *Covenant*. Canada continues its efforts in this area.

- In April 2001, the Standing Senate Committee on Human Rights was established. It was given a broad mandate to examine issues relating to human rights and, inter alia, the machinery of government dealing with Canada's international and national human rights obligations. The Senate Committee tabled its first report on December 13, 2001, which identifies a number of issues for further study as well as recommendations for action. This report is being taken into consideration in developing policies that will further enhance the implementation of human rights instruments in Canada.

- In October 2002, a federal Deputy Ministers Committee was established with the mandate to provide integrated leadership on human rights issues and the responsibility to ensure coordinated communication, dialogue and improved horizontal management and share responsibility for implementing international human rights obligations. It should be noted that some provinces have also begun implementing additional interdepartmental committees to deal with human rights issues within their jurisdictions.

16. With respect to the Committee's more specific recommendation, which suggests that consideration be given to establishing a public body for overseeing implementation and reporting on deficiencies, this has been discussed and will be given further consideration within the context of follow-up to the recommendations of the CHRA Panel Review.

Article 3: Equal rights of men and women

17. Canada reports more fully on its implementation of this article in its reports on the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). Canada's fourth and fifth reports on CEDAW, an update paper and the statement made by the Head of Delegation during Canada's 2003 appearance before the CEDAW treaty body are available on the Internet at www.pch.gc.ca/progs/pdp-hrp/docs/cedaw_e.cfm. These documents provide information on Canada's efforts to achieve equal rights and improve the situation of women.

18. While Canadian women have made many gains in achieving formal equality, full substantive equality has yet to be achieved. Building upon the foundations of Federal Plan for Gender Equality (1995-2000), the Government of Canada, in 2000, approved the Agenda for Gender Equality (AGE), a government-wide multi-year strategy to ensure that gender equality becomes a reality for Canadian women. The components include accelerating implementation of gender-based analysis commitments; enhancing voluntary sector capacity and engaging Canadians in the policy; and meeting Canada's international commitments and treaty obligations.

19. Following a number of high profile and lengthy pay-equity cases, an independent task force and secretariat conducted a comprehensive review of relevant legislation, regulations and guidelines. The aim of the review was to identify an efficient way to achieve and implement effective pay-equity policies. The Pay Equity Task Force released its report in May 2004, and government officials are studying the report.

20. Since the adoption of the *Canadian Human Rights Act* in 1977, the status of women in Canada has improved markedly. However, more than one in five complaints received by the Canadian Human Rights Commission over the last few years involved discrimination on the grounds of sex. Many complaints pertain to pregnancy, for example not hiring or renewing qualified women because they were pregnant. Sexual harassment in the workplace is another area where there is a need for continuing vigilance. The *Canada Labour Code* requires every employer to make every reasonable effort to ensure that no employee is subjected to sexual harassment. They are also required to issue a policy statement concerning sexual harassment. To assist employers in meeting the legal requirements and develop anti-harassment policies, the Canadian Human Rights Commission, in cooperation with Human Resources Development Canada and Status of Women, developed in 2001 a guide for employers, entitled Anti-harassment Policies for the Workplace.[2]

[2] http://www.chrc-ccdp.ca/publications/anti_harassment_toc-en.asp

Specific concern of the Human Rights Committee

21. Canada shares the Committee's concern (paragraph 20 of the Concluding Observations) that women have been disproportionately affected by poverty. Tackling poverty, particularly for children and lone-parent mothers, as well as for Aboriginal and immigrant women, continues to be a challenge and priority for the Government of Canada. However, the most recent data available indicates that, starting in 1997, there has been a continuous downward trend in poverty rates in Canada.

22. Over the last few years, the federal government has introduced a series of measures that have steadily developed support for low- and modest-income families with children. Governments across Canada have continued to introduce new or enhanced measures to improve women's situation in paid work, to help families meet their income needs and balance employment and family responsibilities, and to gain access to other economic resources such as affordable housing. As part of its commitment to reduce poverty and further women's economic equality, the Government of Canada is pursuing activities in a variety of areas:

- parental benefits under the Employment Insurance (EI) program were extended from six months to one year;
- EI coverage is now extended to part-time workers, the majority of whom are women;
- the National Child Benefit System commits all levels of government to reduce child poverty by providing increased Canada Child Tax Benefits to low income families as well as child-related services (see article 24).

23. In 2003, the government established a number of initiatives to promote women's entrepreneurship including the introduction of tax measures in support of the small business sector and the creation of a Task Force on Women Entrepreneurs. The task force released its report in October 2003, and made recommendations in four areas: recognition of the challenges faced by women entrepreneurs; information, training and retraining; access to capital; and export marketing. The government is currently assessing these recommendations and will report on how these are addressed in its next report under the CEDAW.

24. In its Concluding observations (paragraph 20), the Committee also expressed its concern that social program cuts in recent years have exacerbated the inequalities suffered by women affected by poverty. As explained further in Canada's Fourth Report on the *International Covenant on Economic Social and Cultural Rights*, the 1990s were a period of major transformation in public policy for Canada. It was during this period that Canadians and their governments became convinced that massive annual deficits and growing public debt could not continue. There was increasing concern about the long-term sustainability of fundamental social programs. During this period, the federal, provincial and territorial governments faced the challenge of fiscal responsibility and bringing their fiscal deficits under control. As governments restructured and their fiscal situations improved, they were able to reinvest in a number of initiatives supporting

Canadian families with children, and thereby benefiting women, and beginning to address any disproportionate impacts that earlier program cuts may have had on women.

25. Collectively, federal, provincial and territorial governments succeeded in improving economic conditions and improving the situation for women. For example, in 2002:

- women's participation rate in the labour force increased to 59.8 percent;
- employment growth was greater for women (1.4 percent) than men (0.6 percent);
- growth in full-time employment for women (1.5 percent) exceeded that of men (0.4 percent);
- 7.1 percent of all female labour force participants were unemployed compared to 8.1 percent of male labour force participants;
- 72 percent of women with children less than age 16 living at home were part of the paid labour force; and
- 67 percent of female lone parents with children less than 16 living at home were employed (increasing 17 percentage points between 1995 and 2002).

26. Overall, low-income rates for women have declined since the mid-1990s. According to Statistics Canada's after-tax Low-Income Cut-offs, the poverty rate of women aged 18 to 64 has decreased from a high of 14.7 percent in 1996 to 11.5 percent in 2001. Likewise, the low-income rate for female lone parents has declined from a high of 49 percent in 1996 to 31.9 percent in 2001.

27. In 2003-04, the federal government increased the Canada Health and Social Transfer (CHST), the primary mechanism by which the Government of Canada transfers funds to provincial and territorial governments for health care, post-secondary education, social assistance and social services, including early childhood development, to $37.9 billion (compared to $25.8 billion in 1997/98).

Aboriginal Women

28. In its Concluding Observations (paragraph 19), the Human Rights Committee recommended that issues related to the status of Aboriginal women and children still outstanding after the 1985 amendments to the *Indian Act* be addressed.

29. One such issue is the gap in law with respect to matrimonial real property on reserve lands, which has been a pressing concern to both First Nations and to the Government. At present, people living on a reserve have fewer rights regarding their matrimonial home when a marriage or common-law relationship ends than do people living off a reserve. Most of the legal rights and remedies found in Canadian laws relating to the matrimonial home, which apply off reserves, are not available to people living on a reserve.

30. In September 2003, a new research report on the socio-economic effects of marriage breakdown on First Nation women and their children provided further insight into on-reserve matrimonial real property issues. The report, "Urban Aboriginal Women in British Columbia and the Impacts of the Matrimonial Real Property Regime" is an

exploratory study based on interviews with women who, following marital breakdown, left their reserves to live in urban British Columbia. This report is one of several research projects recently undertaken by the Department of Indian and Northern Affairs Canada in its efforts to better understand how contemporary matrimonial real property issues have affected the lives of reserve residents, most particularly women.

31. In November, 2003, the Standing Senate Committee on Human Rights, which had undertaken a study on the issue, tabled an interim report, entitled "A Hard Bed to Lie In: Matrimonial Real Property on Reserve." This report recommends an amendment to the *Indian Act* which would allow provincial/territorial laws with respect to the division of both personal and real matrimonial property to apply on reserves. The Government of Canada is now studying this report and its recommendations.

32. Under Gathering Strength, Canada added $500,000 annually to the Aboriginal Women's Program, which provides support to independent Aboriginal women's organizations and community groups, to enable these women's organizations or groups to: undertake research, develop strategies, enter into discussions, distribute information, participate in Aboriginal self-government initiatives, and communicate with other Canadians and Aboriginal people on the position of Aboriginal women in regards to Aboriginal self-government.

Article 6: Right to life

33. The *Immigration and Refugee Protection Act* (IRPA) came into effect June 28, 2002. Risk to life constitutes an express ground for protection in IRPA (section 97).

Canadian Charter of Rights and Freedoms

34. The Supreme Court of Canada, in *United States v. Burns*,[1] an extradition case, decided that assurances that the death penalty will not be imposed by the requesting State are constitutionally required by section 7 of the *Canadian Charter of Rights and Freedoms* (the *Canadian Charter*) in all but exceptional cases.

Specific concern of the Human Rights Committee

35. In its Concluding observations (paragraph 12), the Committee recommended that Canada take measures to address the problem of homelessness.

36. In 1999, the Government of Canada launched the three-year National Homelessness Initiative (NHI) to help reduce and prevent homelessness across Canada. This included $305 million in funding under the NHI's cornerstone program for the Supporting Communities Partnership Initiative (SCPI) which is designed to help communities across Canada, in partnership with all levels of government and not-for-profit and private stakeholders, to plan and implement comprehensive local strategies addressing the needs

[1] *United States v. Burns*, [2001] 1 S.C.R. 283.

of homeless men, women, children and youth. As a result, many thousands of low-income housing units in a state of disrepair have been brought back, through renovation, to safe conditions. Some of these renovated units are shelters for victims of family violence and rooming houses for people at greatest risk of homelessness.

37. On March 4, 2003, the Government of Canada renewed its commitment to fighting homelessness in communities across Canada by investing $405 million over the next three years. There will be a stronger focus on longer-term transitional and supportive interventions and preventative measures.

38. In November 2001, the Government of Canada introduced a $680 million Affordable Housing Program to stimulate the production of affordable housing, including units for the relative homeless. An additional $320 million investment was made in 2003, bringing the total investment to $1 billion by 2007-2008 ($2 billion with equal financial contributions from the provincial and territorial governments). The Government of Canada also announced a $384 million investment in housing renovation. The Affordable Housing Program will be evaluated in a few years, when sufficient data is available.

39. The Government of Canada's residential renovation assistance was evaluated in 2002. This evaluation confirmed that, overall, the assistance is well targeted to low-income households, including those at risk of homelessness. For example, in 2002: 20% of the renovated rooming houses were occupied by the former homeless; more than one-third of the occupants of renovated rooming houses and 10% of the occupants of renovated rental units reported that hey had been homeless at some time in the past five years; 37% of the occupants of renovated rooming houses and 7% of the occupants of renovated rental units reported that they had used shelters in the past five years; more than 50% of the owners of renovated rooming houses and rental units said that they had rented to homeless people; and 47% said that they have an increased number of tenants who were previously homeless. These data indicate that Government's of Canada renovation assistance is reducing the level of homeless population.

40. A total of $161 million in additional funding was also made available to address the needs of particularly vulnerable and/or over-represented groups within the homeless population, namely Aboriginal persons ($59 million), youth ($59 million) and victims of family violence ($43 million).

Article 7: Protection against torture

41. More information is provided in the reports the Government of Canada has submitted pursuant to the *Convention against Torture*.

Medical or scientific experimentation

42. New *Clinical Trial Regulations* of the *Food and Drug Act* came into effect in September 2001. Among other things, the Regulations require the sponsor to secure approval of the research protocol by a Research Ethics Board (REB). The principal mandate of an REB is

to "ensure the protection of the rights, safety and well-being" of research subjects. The Regulations also require clinical trial sponsors and investigators to adhere to the principles of good clinical practice, of which free and informed consent is a fundamental element. The REB is responsible for reviewing all research involving human subjects funded, conducted, and supported by the Department, and operates in accordance with the Tri-Council Policy Statement: Ethical Conduct of Research Involving Humans.[4]

Violence against Women

43. Eliminating systemic violence against women is a priority for the Government of Canada. Canada recognizes that gender violence, of any kind, is a violation of fundamental human rights. The government reaffirmed its commitment to reduce family violence, particularly against women and children, by funding a third phase of the Family Violence Initiative, where policy-makers, researchers and community groups integrate family violence prevention and can be better equipped to support policy and program action. Further information on the Family Violence Initiative is available in Canada's reports under the CEDAW and the ICESCR.

44. In December 2002, the Federal-Provincial-Territorial Ministers Responsible for the Status of Women issued a report entitled Assessing Violence Against Women: A Statistical Profile.[5] This report provided evidence that the incidence and severity of assaults against women appears to have slightly declined over the past decade. However, overall, violence against women, particularly young women, continues to be a persistent social and economic problem. *Family Violence in Canada: A Statistical Profile 2003* was also recently released.

45. In September 2003, Federal-Provincial-Territorial Ministers Responsible for the Status of Women concluded their 22nd annual meeting, reaffirming their commitment to advancing equality for women. Ministers focused attention on the circumstances of Aboriginal women, both on- and off-reserve, with violence as one of the priorities. Accordingly, Ministers established a working group to develop a plan of action to guide their work in this important area.

Non-refoulement

46. Pursuant to s. 97 of the *Immigration and Refugee Protection Act*,[6] the risk of torture, within the meaning of Article 1 of the *Convention against Torture*, and the risk of cruel and unusual treatment or punishment are grounds for conferring protection in Canada.

Specific concerns of the Human Rights Committee

47. In its Concluding observations (paragraph 14), the Human Rights Committee expressed its concerns that Canada considers that it is not required to comply with requests for

[4] http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm
[5] http://www.swc-cfc.gc.ca/pubs/0662331664/index_e.html
[6] http://laws.justice.gc.ca/en/I-2.5/index.html, which came into force on June 28, 2002.

interim measures. Canada is of the view that interim measures requests are non-binding. Article 39(2) of the *Covenant* provides that the Committee shall establish its own rules of procedure. Rule 86 of the Committee's Rules of Procedure provides that the Committee may inform the State of its views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. The language of Rule 86 is consistent with the non-binding nature of the Committee's views. Neither the Covenant nor the Optional Protocol provides for the Committee to make orders binding on States.

48. Nevertheless, the Government of Canada always gives careful consideration to interim measures requests from the Committee, and will respect them where it is possible to do so. Canada notes that it usually acts in accordance with the interim measures requests issued by human rights bodies. It is committed to do so in the future, although the decision whether or not to act in accordance with an interim measures request must necessarily be made on a case-by-case basis. This should not in any way be construed as a diminution of Canada's commitment to human rights or its ongoing collaboration with the Committee.

Canadian Charter of Rights and Freedoms

Mandatory Minimum Penalties

49. The Supreme Court of Canada recently upheld the constitutionality of a mandatory minimum penalty of four years for the use of a firearm in criminal negligence causing death,[7] but commented on the negative effects of mandatory penalties in introducing rigidity into the sentencing process. In determining whether a mandatory minimum sentence constitutes cruel and unusual punishment (s. 12 of the *Canadian Charter*),[8] Canadian courts are careful to consider both whether the sentence actually imposed is grossly disproportionate to what would have been appropriate for the particular offender and whether the statutory minimum is grossly disproportionate, taking into account "reasonable hypothetical circumstances".

50. The *Criminal Code* contains 29 offences that carry mandatory minimum penalties. They fall into eight categories - impaired driving and blood alcohol over .08, betting and book-making, treason, 1st and 2nd degree murder (mandatory life), use of a firearm in an offence, use of a firearm in 10 listed violent offences, possession, trafficking etc of various prohibited firearms, and living off the avails of child prostitution - but firearms and impaired driving offences account for the majority of the 29 offences.

Non-refoulement

51. In *Suresh (Minister of Citizenship and Immigration)*,[8] the Supreme Court indicated the Immigration Minister should generally decline to deport refugees where on the evidence

[7] http://www.canlii.org/ca/cas/scc/2000/2000scc39.html
[8] *Suresh c.Canada (Minister of Citizenship and Immigration)*, [2002] 1 R.S.C. 3.

there is a substantial risk of torture and that only in exceptional circumstances should a person be deported to a country where they would be at risk of torture.

Justification of the use of reasonable force by parents

52. The Supreme Court of Canada, in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* dealing with the justification of the use of reasonable force by parents and teachers by way of correction of child or pupil,[9] referred to the preamble and to Article 7 of the *Covenant* as well as to the provisions of the *Convention on the Rights of Child*. The Court concluded that from these international obligations, it follows that what is "reasonable under the circumstances" will seek to avoid harm to the child and will never include cruel, inhuman or degrading treatment. The Court concluded that neither the *Convention on the Rights of the Child* nor the *Covenant* explicitly requires state parties to ban all corporal punishment of children. It also examined the views expressed by the Human Rights Committee and noted that in the process of monitoring compliance with the *Covenant*, the Human Rights Committee of the United Nations has expressed the view that corporal punishment of children in schools engages Article 7's prohibition of degrading treatment or punishment, however the Committee has not expressed a similar opinion regarding parental use of mild corporal punishment.

Article 8: Protection against slavery and forced labour

53. The Government supports various prevention efforts within Canada designed to prevent human trafficking and forced prostitution, particularly among vulnerable populations. The Canadian approach has been to facilitate legitimate freedom of movement, while working toward comprehensive domestic and international policies to prevent the kinds of criminal activities which exploit individuals and erode the integrity of border control systems.

54. In February 2004, the federal Interdepartmental Working Group on Trafficking in Persons was mandated to coordinate federal efforts to address human trafficking and develop a federal strategy, which will focus on the prevention of trafficking, the protection of its victims and the prosecution of traffickers.

55. In March 2004, the Canadian Minister of Justice announced a review of the Criminal Code to assess the need for any additional reforms to strengthen the criminal justice system's response to trafficking in persons. Other recent federal anti-trafficking measures include: the establishment by the RCMP of the Human Trafficking Investigative Unit to coordinate domestic and international trafficking investigations; a training seminar on trafficking for police, prosecutors, immigration, customs and consular officials, co-hosted by the Department of Justice and the International Organization for Migration in March 2004; a forum on human trafficking, hosted by the Canadian Ethnocultural Council, the Minister of Justice and the Secretary of State (Status of Women) in March 2004; the development and distribution of a Government of Canada anti-trafficking poster through

[9] *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76.

police stations, victim services, community centres, refugee and immigrant centres across Canada, and; the development of a website on trafficking in persons with related information and links.

56. Trafficking in persons is prohibited by various offences in the Criminal Code of Canada, including forcible confinement, kidnapping, extortion, assault and prostitution-related offences. In addition, the Immigration and Refugee Protection Act includes a specific offence against trafficking in persons, which provides for severe penalties: fines of up to $1 million, and imprisonment for up to life. The Act lists specific aggravating factors which apply to both the trafficking in persons and human smuggling offences. These include subjecting the victim to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation. The Act also contains a new inadmissible class to deal specifically with human traffickers. It allows for the forfeiture of money and property seized from traffickers, an increase in penalties and new provisions against the possession and use of fraudulent documents in immigration-related crimes.

International

57. Canada took a leading role in the development of the United Nations' *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations' Convention against Transnational Organized Crime, both of which Canada ratified on May 13, 2002. Canada also ratified the International Labour Organization's *Worst Forms of Child Labour Convention No.182* on June 6, 2000. Canada has signed the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* on November 10, 2001 and has undertaken measures to facilitate its ratification in the near future. Canada is also encouraging other States to ratify and implement these new instruments quickly.

58. Canada is also taking a leading role in other international fora to combat the smuggling of migrants and the trafficking of human beings. For example, Canada held the Presidency of the G8 for 2002 and is working in both the Lyon and Roma groups (transnational organized crime and counter-terrorism working groups respectively) to address these and other international organized crime issues.

59. The Government of Canada provides support to multiple international prevention efforts designed to address the root causes of human trafficking in source States. For instance, it has committed over $3 million to eliminate the trafficking of children into forced labour and to support the rehabilitation of children who have been trafficked. Additionally Canada has distributed a multilingual (14 languages) Anti-Trafficking pamphlet through its missions abroad and to non-governmental organizations with access to potential trafficking victims in source States.

Article 9: Right to liberty and security of person

National Defence Act

60. A number of amendments to the *National Defence Act* in 1999 dealt with deprivation of liberty and arbitrary detention. One of the changes was that under the old legislative regime, release from pre-trial custody was done by way of petition to the Minister. Often this was a lengthy process and resulted in longer periods of pre-trial detention. However, under the changes to the Act a military judge now reviews pre-trial custody, in a much speedier fashion, with appeals being heard by the Court Martial Appeal Court.

Anti-terrorism Act

61. Following the terrorist attacks against the United States of 11 September 2001, Canada undertook a comprehensive review of criminal, security and other relevant legislation with a view to addressing the new threat. The review resulted in the *Anti-terrorism Act*. Most of the provisions came into force on December 24, 2001, and with the last proclamation on 6 January 2003, it is now fully in force. The preamble to the *Anti-terrorism Act* recognizes that terrorism is a matter of national concern but this concern must be addressed while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the *Canadian Charter of Rights and Freedoms*.

62. The Act addresses a number of specific areas and implements Canada's international obligations under Security Council resolution 1373 of 28 September 2001. Specific amendments include a definition of "terrorist activity", new criminal offences and sentences, changes to evidence laws, and powers and procedures for dealing with the financing of terrorism.

63. The amendments contain new provisions respecting the arrest and detention of persons to prevent terrorist activities, based on existing criminal law powers. Those suspected of involvement in criminal offences are subject to the normal process of investigation and prosecution. As a preventive measure, however, any peace officer who believes on reasonable grounds that a terrorist activity will be carried out may obtain a judicial arrest warrant and those suspected of involvement and identified may be arrested and detained, if there are grounds to suspect that the arrest is necessary to prevent the terrorist activity. Where there are exigent circumstances, suspects may be arrested without a warrant. Anyone arrested must be taken before a judge within 24 hours if a judge is available and otherwise as soon as possible. Once before the judge, the suspect can be directed to comply with a court order to keep the peace and meet any specific requirements imposed. If the suspect agrees, he or she must be released, subject to re-arrest and prosecution if the order is not complied with. If the suspect refuses to agree, he or she may be detained for up to 12 months. At the end of this period, the suspect must be released, subject to the possibility of the State bringing a further recognizance application. In all proceedings, once the suspect has been arrested, the burden of establishing the existence of the circumstances needed to obtain a recognizance order lies with the State.

64. The legislation also contains powers to conduct judicial investigative hearings (s. 83.28 of the *Criminal Code*) at which attendance by anyone specified by the judge to have direct and material information related to a terrorism offence is mandatory, and those ordered to attend may be arrested and detained for failure to attend or if there is reason to believe they might be about to flee. The compatibility of these provisions with the *Canadian Charter of Rights and Freedoms* has been examined by the Supreme Court of Canada. On June 23rd, 2004, in *Application under s. 83.28 of the Criminal Code (Re)*, the majority of the Court stated that the challenge for democracies in the battle against terrorism is to balance an effective response with fundamental democratic values that respect the importance of human life, liberty and the rule of law. The Supreme Court of Canada upheld the constitutionality of this provision and clarified certain procedural aspects so as to guide future hearings.

65. The Supreme Court of Canada reiterated what it had expressed in previous cases (*Suresh v. Canada (Minister of Citizenship and Immigration)* and *United States v. Burns*) concerning the seriousness with which it views deportation or extradition to countries where torture and/or death are distinct possibilities and reaffirmed that evidence collected at an investigative hearing is to be subject to an order preventing its subsequent direct or derivative use in extradition or deportation proceedings where the potential for such use by the state exists.[10]

66. The *Anti-Terrorism Act* contains rigorous safeguards to uphold the rights and freedoms of those affected by it. These safeguards include, with respect to preventive arrest and investigative hearings: the prior consent of the Attorney General where the proceedings take place; a judicial authorization; and that the Attorney General and Solicitor General of Canada, provincial Attorneys General and Ministers responsible for policing report annually to Parliament on the use of the preventive arrest and investigative hearing provisions in the new Act. In addition, Parliament has directed that a comprehensive review of the legislation be commenced within 3 years of its being assented to (December 18, 2001). Provisions authorizing the conduct of investigative hearings and the imposition of recognizances with conditions (including the authority to arrest without a warrant in exigent circumstances) will cease to apply after 5 years unless Parliament passes a special resolution to extend their operation.

67. Nothing in any of the new offences, investigative powers or other provisions affects any of the safeguards already in place against torture and related activities. Criminal Code subsection 269.1(4) which bars the use of any statement obtained by torture for any purpose except as evidence that it was in fact obtained by torture, applies in full to all of the new procedures.

68. In addition, the Royal Canadian Mounted Police (RCMP) has developed internal policies which add additional safeguards with respect to the use of these provisions. Among other requirements, the policy requires that the RCMP Deputy Commissioner of Operations

[10] *Application under s. 83.28 of the Criminal Code (Re)*, 2004 SCC 42 *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3; *United States v. Burns*, [2001] 1 S.C.R. 283.

personally approve all requests from RCMP officers to make use of these provisions, before a request is made for the consent of the Attorney General.

Purpose and Principles of Sentencing

69. The *Criminal* Code sets out principles to guide the sentencing courts and encourage flexibility in the exercise of judicial discretion. The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Parliament has placed a major emphasis on a "least restrictive measures" approach, and has provided a direction to use incarceration only where community sentencing alternatives are not considered feasible. This is consistent with Parliament's concern to address the overuse of incarceration as a means of addressing crime in Canada.

Conditional Sentences

70. The Government of Canada encourages the use of measures that reduce reliance on incarceration by expanding the use of alternative measures and promoting community justice alternatives including the use of Restorative Justice approaches for youth and adults. The conditional sentence (sections 742 to 742.7 of the *Criminal Code*) contained in the sentence reforms in force July 1, 1999 is a major tool which permits the courts to use community-based sentences in cases which would otherwise result in a sentence of imprisonment. While the use of conditional sentences has gradually increased over the five years since coming into effect in 1996, they are still used in a small proportion of cases, accounting for between 4-6% of all sentences.

Review of Pre-trial Detention

71. In response to concern about remand facility overcrowding, and consistent with the goal of achieving greater efficiencies and fairness in the criminal justice system, federal and provincial/territorial government officials agreed in April, 2004 to conduct a comprehensive review of bail in both the pre-trial and appeal context. A report of the recommendations resulting from the review is expected to be delivered in 2005.

72. In *R. v. Hall*,[11] the Supreme Court of Canada considered the constitutionality of the provision of the *Criminal Code* which provides that pre-trial detention is justified for "any other just cause being shown" (pre-trial detention is also authorized to ensure attendance in court and where necessary for the protection or safety of the public) and where the detention is necessary in order to maintain confidence in the administration of justice. The court found the words "any other just cause" to be inoperative as detention on this basis would violate the *Canadian Charter of Rights and Freedoms* right to life, liberty and security of the person and right not to be denied reasonable bail without just cause. It upheld the remainder of the provision, holding that, in considering whether detention is necessary to maintain confidence in the administration of justice, the inquiry must focus on the reasonable community perception of the necessity of denying bail to

[11] *R. v. Hall*, [2002] 3 S.C.R. 309.

maintain confidence in the administration of justice, judicially determined through an objective lens having regard to all the circumstances including the strength of the case, the gravity of the nature of the offence, the circumstances surrounding the offence and the potential for a lengthy term of imprisonment.

Canadian Charter of Rights and Freedoms

73. In *R. v. Mann*,[12] the Supreme Court of Canada stated that although there is no general power of detention for investigative purposes, police officers may detain an individual if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that the detention is reasonably necessary on an objective view of the circumstances. These circumstances include the extent to which the interference with individual liberty is necessary to the performance of the officer's duty, the liberty interfered with, and the nature and extent of the interference. At a minimum, individuals who are detained for investigative purposes must be advised, in clear and simple language, of the reasons for the detention. Investigative detentions carried out in accordance with the common law power recognized in this case will not infringe the detainee's rights under the *Charter*. They should be brief in duration. Investigative detentions do not impose an obligation on the detained individual to answer questions posed by the police. Where a police officer has reasonable grounds to believe that his safety or the safety of others is at risk, the officer may engage in a protective pat-down search of the detained individual. The investigative detention and protective search power must be distinguished from an arrest and the incidental power to search on arrest.

Article 10: Treatment of persons deprived of liberty

74. In a report released on January 29, 2004, entitled "Protecting Their Rights", the Canadian Human Rights Commission (CHRC) found that women prisoners continue to face systemic human rights problems in the federal correctional system. The report focuses on the discriminatory impact of some policies and programs, particularly on Aboriginal women, racialized women and women with disabilities. The report's main finding is that the correctional system should take a more gender-based approach to custody, programming and reintegration for women offenders. In the report, CHRC recommends various measures to address the disproportionate number of federally sentenced Aboriginal women. These measures include: reassessing the classification of all Aboriginal women currently classified as maximum security using a gender-responsive reclassification tool and balanced individual assessments; independent adjudication for decisions related to involuntary segregation, given that aboriginal women and other racialized women are more often singled out for segregation than other inmates; that the needs and low risk of minimum and medium security women inmates be considered in the construction of additional facilities for women, such as Aboriginal Healing Lodge; that the unique needs of Aboriginal offenders should be reflected in the structure and content of programming strategies meeting the rehabilitation needs of federally sentenced

[12] *R. v. Mann*, [2004] SCC 52.

aboriginal women. The Correctional Service of Canada will study the recommendations and prepare a comprehensive response to the report.

75. The *Youth Criminal Justice Act* creates a comprehensive regime to deal with all aspects of the youth justice system. The new legislation (entered into force in April 2003) respects the rights of young persons, and aims to increase community responses to youth offending, reduce overreliance on incarceration, and increase rehabilitation and reintegration of young people. It sets out measures to deal with early intervention outside the formal court process; the youth court process following a charge; special rules for sentencing of young persons found guilty of an offence; the treatment of young persons sentenced to custody along with measures respecting their reintegration and rehabilitation; the safeguarding and use of information about young persons. More information can be found in the responses given to the Committee on the Rights of the Child to the list of issues in September 2003 (http://www.pch.gc.ca/progs/pdp-hrp/docs/crc-2003/UNCRC_1BE.pdf).

76. In *Québec (Ministre de la justice)* v. *Canada (Ministre de la justice*[13]*)*, the Quebec Court of Appeal found that the principles on which the *Youth Criminal Justice Act* is based, as well as the provisions on sentencing, and the custody and supervision of young persons (sections 3, 38, 39 and 83) do not violate the *International Covenant on Civil and Political Rights* or the *Convention on the Rights of the Child*. The Court also found that the provisions of the Act dealing with the exception to the confidentiality of information, and the imposition of adult sentences on young persons for certain offences (sections 61, 64, 79, 72, 75 and 110(2)(*b*)) are not incompatible with those instruments. Furthermore, the Court found that the provisions that provide for the possible imprisonment of young persons with adults do not violate the Covenant because the basic rule established by the Act is that a young person must be held separately from adults. With respect to the compatibility of the same provisions with the *Canadian Charter*, the Quebec Court of Appeal upheld the validity of all the provisions challenged, except those creating a presumption in favour of an adult sentence and exceptions to the confidentiality rule that would create a presumption that would allow publication of information relating to a youth sentence for a serious violent offence. The Court found that those provisions were contrary to s. 7 of the *Canadian Charter* for placing too onerous a burden on the youth in a manner that is inconsistent with the principles of fundamental justice, and that these violations were not justified in a free and democratic society (section 1 of the *Canadian Charter*). The Court held that a less infringing and equally effective alternative to the presumptions would be the former provisions which require the Crown to bear the burden of proof in these instances rather than the young person. The Court of Appeal's judgment was based in part on its acceptance of the following four principles as principles of fundamental justice protected by s. 7 of the *Canadian Charter*: the justice system must treat young persons differently than adults; the goal of rehabilitation must guide their treatment; the youth justice system must limit the disclosure of young persons' identity to prevent their stigmatization; and the best interests of the child must be the guiding factor in decisions affecting youth.

[13] *Québec (Ministre de la Justice) v. Canada (Ministre de la Justice)* 5000-09-011369-014.

Canadian Charter of Rights and Freedoms

77. In *R. v. Demers*,[14] the Supreme Court of Canada examined the *Criminal Code* provisions pursuant to which the absolute discharge is not available to the accused found unfit to stand trial. Permanently unfit accused are subject to indefinite conditions on their liberty, of varying degrees of restrictiveness, resulting from the disposition orders of the Review Board or the court. The impugned provisions deal unfairly with the permanently unfit accused who are not a significant threat to public safety and infringe the liberty of those accused. This infringement cannot be justified in a free and democratic society.

78. In *Penetanguishene Mental Health Centre v. Ontario (Attorney General)*,[15] the Supreme Court of Canada stated that the principles of fundamental justice (s. 7 of the *Charter*) require that the liberty interest of an accused who has been found not criminally responsible ("NCR") by reason of mental disorder be taken into account at all stages of a Review Board's consideration. In this process, public safety is paramount. Within the outer boundaries defined by public safety, however, the liberty interest of an NCR accused should be a major preoccupation of the Review Board when it makes its disposition order. Even where a risk to the public safety is established, the conditions of the disposition order are to be "the least onerous and least restrictive to the accused" consistent with the level of risk posed considering the mental condition of the NCR accused, his or her other needs, and the objective of eventual reintegration into the community.

Article 14: Fair trial rights

Independence of courts

79. In 1998, the Parliament of Canada amended the *Judges Act* to establish a "Quadrennial" Judicial Compensation and Benefits Commission. These amendments were intended to establish an "independent, effective and objective" process for determining judicial compensation, as required by the Supreme Court of Canada in the *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*,[16] which requires the provinces to set an independent body with the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature. The Court also ruled that any changes to or freezes in judicial remuneration made without prior recourse to the body are unconstitutional.

80. In *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*,[17] the Supreme Court of Canada ruled that the New-Brunswick legislation abolishing the position of supernumerary judge, contravenes constitutional guarantees of judicial independence. By not seeking approval from an independent commission, the legislature

[14] *R. v. Demers*, 2004 SCC 46.
[15] *Penetanguishene Mental Health Centre v. Ontario (Attorney General)*, [2004] 1 S.C.R 498
[16] Also referred to as *Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3.
[17] *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, [2002] 1 S.C.R. 405.

violated the institutional dimension of financial security of judges as set out in the *Reference re Independence and Impartiality of Judges of the Provincial Court of Prince-Edward-Island*.

81. In *Ell v Alberta*,[18] the Supreme Court of Canada ruled that guarantees of independence are required for justices of the peace because they exercise functions (like issuing warrants) that are directly related to the enforcement of law and that have a major impact on citizens' right and freedoms.

82. The National Judicial Institute (NJI), the principal national body dedicated to continuing education for approximately 1000 federally appointed judges, and for provincially appointed judges throughout Canada, has developed, in recent years, important and innovative programs for our judiciary. For example, a key element of the NJI's curriculum has been the Social Context Education Project. There are also a number of programs provided on international law issues, and on international human rights specifically.

83. The Canadian Judicial Council, made up of chief justices and associate chief justices and created to improve the quality of judicial services in superior courts and handle the complaints process against federally appointed judges, published a statement of judicial ethics in 1998, Ethical Principles for Judges. This Statement, advisory in nature, provides guidance to judges on matters of judicial independence, integrity, diligence, equality and impartiality, and informs the public on ethical and professional questions facing the judiciary.

National Defence

84. In order to ensure that those accused through the military justice system with a service offence are afforded guarantees provided to other members of Canadian society, amendments were brought to the *National Defence Act*. Consequently, the prosecutorial and defence services of the Canadian Forces have undergone extensive changes. Separate offices have been established under the Director of Military Prosecutions and the Director of Defence Counsel Services. The Director of Military Prosecutions is responsible for all court martial prosecutions and decides which type of court martial should be held and whether there should be one. The Director of Defence Counsel Services is responsible for the provision of legal services to accused persons subject to the Code of Service Discipline. The Director of Defence Counsel Services is appointed by the Minister for National Defence for renewable terms of up to four years and so would enjoy a certain autonomy from the Judge Advocate General as well as from prosecuting counsel.

85. An independent commission has also been established to make recommendations concerning the remuneration of military judges, in order to ensure the financial independence aspect of judicial independence.

[18] *Ell v Alberta*, [2003] 1 S.C.R. 857.

Access to courts

86. In *Bouzari v. Iran*,[19] the Ontario Court of Appeal concluded that there is no obligation under the *International Covenant on Civil and Political Rights* that requires access to the courts for actions alleging torture by foreign states committed outside Canadian jurisdiction. Article 14 of the *Covenant* has not been interpreted to date to require a state to provide access to its courts for sovereign acts committed outside its jurisdiction.

87. In *British Columbia (Minister of Forests) v Okanagan Indian Band*,[20] the Supreme Court of Canada stated that Courts of Superior jurisdiction have the discretionary power to award costs to a litigant prior to the final disposition of a case and in any event of the cause (interim costs). Several conditions must be present for an interim costs order to be granted. The party seeking the order must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case; the claimant must establish a *prima facie* case of sufficient merit to warrant pursuit; and there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate. Concerns about access to justice and the desirability of mitigating severe inequality between litigants are a prominent feature in the rare cases where such awards are made.

88. In Canada, Aboriginal people enjoy access to the judicial system, as individual and collective plaintiffs. Accordingly, many individuals, communities and leaders are increasingly knowledgeable about the ability to seek judicial clarification of their treaty and aboriginal rights, which enjoy constitutional protection under Section 35 of the *Constitution Act, 1982*. In direct support of this process, the Test Case Funding program has been put in place. Over the past 20 years, it has funded 160 cases (including 47 cases at the Supreme Court of Canada) at a cost of approximately $20.5 million.

89. The Office for Disability issues funded Kindale Development Association in 2001 and 2002 to develop Legalpix: A pictorial explanation of Canada's Civil Justice System and funded Law Courts Education Society of British Columbia in 2003 and 2004 to develop and implement a justice system training to assist people with developmental disabilities.

Proceedings in public and openness of the proceedings

90. On June 23, 2004, the Supreme Court of Canada, in the context of a constitutional challenge to the investigative hearing provisions of the *Anti-terrorism Act*[21] (see above under article 9), found that Parliament chose to have investigative hearings of a judicial nature, the open court principle is a fundamental characteristic of judicial proceedings that should not be presumptively displaced in favour of an *in camera* process and that judicial officers should therefore reject the notion of presumptively secret hearings. The presumption of openness should only be displaced upon proper consideration of the competing interests at every stage of the process. The existence of the hearing and as

[19] *Bouzari v. Iran* [2002] O.J. No. 1624 (confirmed by the Ontario Court of Appeal [2004] O.J. No. 2800).
[20] *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 S.C.J. 76.
[21] *Vancouver Sun (Re)*, 2004 SCC 43.

much of its subject-matter as possible should be made public unless, under a balancing exercise of minimal impairment / proportionality, secrecy becomes necessary. Applying the test in a contextual manner, judges would be entitled to proceed on the basis of evidence that satisfies him or her that publicity would unduly impair the proper administration of justice.

91. The *Anti-terrorism Act* amended the *Canada Evidence Act* (CEA) by setting out pre-trial, trial and appellate procedures to apply where there is a possibility that information injurious to international relations, national defence or national security could be disclosed. Once notice has been given to the Attorney General for Canada by any participant to a proceeding who expects to cause the disclosure of sensitive information, disclosure is prohibited unless authorized by the Attorney General of Canada or the Federal Court. The Federal Court must balance the public interest in disclosure against that in non-disclosure and, in order to serve as far as possible both of these public interests, may provide for the use in proceedings of summaries and agreed statements of fact. To ensure that these procedures are consistent with fair trial rights, the CEA provides that the person presiding at a criminal proceeding may make any order they consider appropriate, other than calling for disclosure of the information. Orders can include staying proceedings (if the judge takes the view that the accused would not otherwise get a fair trial), dismissing specified counts of the indictment or information or proceeding only in respect of a lesser or included offence.

Right to trial within reasonable time

92. Amendments (entered into force in 2002) to the *Criminal Code* contain measures to render the administration of justice more efficient and effective by simplifying trial procedure, modernizing the criminal justice system and enhancing its efficiency through the increased use of technology. Elements include modifying some of the procedural aspects of preliminary inquiries (creating a pre-preliminary hearing to determine scope, allowing admission of credible or trustworthy evidence), creating a limited reciprocal disclosure obligation with regard to expert reports, establishing rules of court in relation to case management and preliminary inquiries, facilitating the use of electronic documents, expanding the potential for remote appearances, providing for jury alternates and for jury selection by a judge other than the trial judge.

Legal Aid

93. In November 2002, the different levels of governments agreed to work together on a renewal strategy (Legal Aid Renewal Strategy) that will ensure the legal aid needs of economically disadvantaged Canadians are met in a fair and equitable manner. The renewal strategy would address fair and equitable allocation of criminal legal aid resources as well as addressing innovative ways to deliver legal aid services. Negotiations were undertaken ending with an agreement in principle in June 2003. Thereafter agreements were drafted which increased contributions to adult criminal, youth and immigration and refugee legal aid.

94. Canada provided an overview of its support of legal aid up to early 2003 in its report to CEDAW.

95. In *New Brunswick (Minister of Health and Community Services) v G. (J.)*,[22] the Supreme Court of Canada determined that the *Canadian Charter* (right to life, liberty and security) applies outside of the criminal law context. In that case, the New Brunswick Minister of Health and Community Services was granted custody of the appellant's three children for a six-month period. He later sought an extension of the custody order for a further period of up to six months. The Court found that where government action triggers a hearing in which either the physical or psychological integrity of the individual are at risk then the government is under an obligation to do whatever is require to ensure that the hearing be fair. In some circumstances, depending on the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the party, the government may be required to provide an indigent party with state-funded counsel.

96. In *Winters v Legal Services Society*,[23] the Supreme Court of Canada held that the possibility of solitary confinement following a disciplinary hearing for a prisoner who was incarcerated and serving a life sentence entitled the applicant to mandatory legal aid services. The level of service, which a reasonable person of modest means would expect to receive, however might not include legal representation at the hearing and was up to the legal aid delivery entity to determine.

97. In *R v Howell*,[24] the Supreme Court of Canada stated that the "accused is not entitled to publicly funded counsel of his choice but, at the highest, competent publicly funded counsel."

Review of conviction, sentence

98. Previously, the *Criminal Code* allowed people who believed they were wrongly convicted of an indictable offence, or sentenced to preventive detention under the dangerous and long-term offender part of the *Code*, to apply for a review of their conviction by the Minister of Justice. The *Criminal Code* contains new sections (696.1-696.6) that clearly state when a person is eligible for a review; specify the criteria under which a remedy may be granted; provide a power to make regulations to explain the review process and how one applies; expand the Minister's powers to include the review of summary convictions; and provide those investigating cases on behalf of the Minister with powers to compel witnesses to provide information and documents.

99. To make the conviction review process more open and accountable, the Minister of Justice will also provide an annual report to Parliament and a web site will be created to give applicants information on the process. A senior person from outside of the Department of Justice will be appointed to advise the Minister directly and oversee the

[22] *New Brunswick (Minister of Health and Community Services) v G. (J.)* [1999] 3 S.C.R. 46.
[23] *Winters v Legal Services Society*, [1999] 3 S.C.R. 160.
[24] *R v Howell*, [1996] 3 S.C.R. 604.

review of applications. This will improve timeliness and openness of the review process, and provide greater independence from the Department.

Sentencing considerations for Aboriginal Offenders

100. As part of the statement of purpose and principles of sentencing (included in the 1999 sentencing reforms), judges must consider all alternatives to incarceration that are reasonable in the circumstances, with particular attention to the circumstances of Aboriginal offenders.

101. In the case of *R. v. Gladue*,[25] the Supreme Court of Canada concluded that this does not give preferential treatment to aboriginal offenders, but seeks to treat them fairly by recognizing that their circumstances are different. It requires judges to consider the extent to which background and systemic factors unique to aboriginals have played a part in bringing them before the Court, and to consider restorative approaches that take into account their aboriginal heritage or connection.

Right to compensation for wrongful conviction

102. In the fall of 2002, in response to a number of wrongful convictions across the country and the various reports of inquiries they generated, a Working Group on the Prevention of Miscarriages of Justice has been established. The group's mandate is two-fold: to develop a list of best practices to assist prosecutors and police in better understanding the causes of wrongful convictions, and to recommend proactive policies, protocols and educational processes to guard against future miscarriages of justice. The report is nearing completion.

Article 17: Right to privacy

103. In 2002, the Supreme Court of Canada recognized the quasi-constitutional status of the *Privacy Act* in *Lavigne v. Canada (Office of the Commissioner of Official Languages)*[26]. This demonstrates the fundamental importance that Canadian society accords to respect for privacy.

104. Canadians are protected not only by the *Privacy Act*, but also by the *Personal Information Protection and Electronic Documents Act*, which governs the collection, use and disclosure of personal information in the course of commercial activities. This act has applied since January 2001 to the personal information of customers and employees of the private sector under federal jurisdiction, since January 2002 to personal health information, and since January 2004 to personal information collected, used or disclosed in the course of commercial activities by any organization, whether or not under federal jurisdiction.

[25] *R. v. Gladue*, [1999] 1 S.C.R. 688.
[26] *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773.

105. In 1998, the enactment of the *DNA Identification Act* authorized the establishment of a National DNA Data Bank to hold the DNA profiles of offenders convicted of "designated" offences as well as DNA profiles from biological substances found at the scene of an unsolved crime. The Act also amended the *Criminal Code* to introduce provisions to allow judges to order the taking of DNA samples from an offender convicted of a designated offence for the purposes of the National DNA Data Bank. The Government undertook to subject the Act to a 5-year parliamentary review; that an independent advisory committee (including a representative from the Office of the Privacy Commissioner) will be created to oversee implementation of the Act and administration of the data bank and that the RCMP Commissioner will include a report on operation of the DNA data bank in his annual report to be tabled in Parliament. In the case of *R. v. S.A.B.*,[27] the Supreme Court stated that, generally, the DNA provisions appropriately balance the public interest in law enforcement and the rights of individuals to dignity, physical integrity, and to control the release of personal information about themselves.

106. In 2001, the *Anti-terrorism Act* amended the *Criminal Code* to ensure that DNA technology was available in the investigation of terrorist offences and for the data banking of the DNA profiles of persons convicted of terrorism offences. Many of these offences were already covered in the existing law.

107. The *Public Safety Act, 2002* (entered into force in May 2004) amends several federal statutes (including the *Aeronautics Act* and *Immigration and Refugee Protection Act*) to facilitate the collection and use of information about particular high-risk individuals or airline passengers. The uses for the information are limited to the purposes outlined in each Act, for example, transportation security, national security, defence of Canada, etc. The safeguards in the *Aeronautics Act* include limiting the disclosure to designated officials, destroying the information after seven days unless required for transportation security or threats to the security of Canada, keeping written records of retention and disclosure, and annual reviews of any retained information. The amendments to the *Immigration and Refugee Protection Act* allow for regulation of the type of data collected and its disclosure, retention and destruction. The *Public Safety Act* also allows the Minister of National Defence to authorize the interception of private communications, where necessary to identify or prevent damage or interference with military computer systems or their data and provided that measures are in place to protect Canadians' privacy in the use and retention of such information.

108. Guidelines related to the use, access and disclosure of customs information were published in November 2003. The guidelines give direction on providing appropriate protection to private information about individuals. The guidelines focus particular attention on the need to carefully assess requests for access to private information that is considered core biographical information, or information about an individual's lifestyle and personal preferences.

[27] *R. v. S.A.B.*, [2003] 2 S.C.R. 678.

109. The federal Sex Offender Registry came into operation on April 1, 2004, with the coming into force of the *Sex Offender Information Registration Act*. The legislation contains strong measures to ensure full respect for the privacy and fundamental rights of offenders who may be subject to a registry order. Offenders may apply to a judge for a refusal of a registration order or to appeal one that has been made. An offender may also apply to a judge to have his or her name permanently removed from the registry. Data collected under the legislation may only be used by authorized police and only when they are investigating a specific sexual crime. Any unauthorized access to or leaking of information in the registry is an offence.

110. In the period under review, the Supreme Court of Canada issued a number of decisions on issue of privacy as indicated below.

Canadian Charter of Rights and Freedoms

111. In *R. v. Jarvis* and *R v. Ling*,[28] the Supreme Court of Canada examined the extent to which Revenue Canada investigators could use their audit powers under the *Income Tax Act* to pursue criminal investigations. The case involves the distinction between audit and investigatory powers given under the *Income Tax Act*. The Court concluded that where the predominant purpose of an inquiry is the determination of penal liability, all *Charter* protections (right to liberty, right to privacy) relevant in the criminal context must apply, including giving the taxpayer the appropriate warning and the need to obtain search warrants to further the investigation.

112. The Government has responded to the decision of the Court, by requiring search warrants for the collection of information from third parties where the predominant purpose of the investigation is the determination of penal liability.

113. In *R. v. Law*,[29] a locked safe belonging to the accused was reported stolen and then recovered, open, in a field. In the course of conducting the investigation for the theft of the safe, a police officer not involved in the investigation photocopied some financial documents from the safe and forwarded them to Revenue Canada. The Crown instituted proceedings against the owner of the safe for contraventions of reporting requirements under the *Excise Tax Act*. The Court concluded the police's seizure of the safe was restricted to the purpose of the seizure, namely the investigation of the theft and not to the investigation of totally unrelated hunches. The search was found to be unreasonable and the evidence was excluded from the trial. The case is important as it considers "informational privacy" in commercial documents.

114. In *R. v. Feeney*, the Supreme Court of Canada recognized the higher privacy interests attached to a dwelling house as opposed to other premises. The *Criminal Code* has been amended to provide for so-called "Feeney warrants" to authorize the police to enter a dwelling house to affect an arrest. They can be issued as part of an arrest warrant (when the police know that the person will be found in a dwelling house when they apply for an

[28] *R. v. Jarvis*, [2002] 3 S.C.R.73 and *R v. Ling*, [2002] 3 S.C.R 814.
[29] *R. v. Law*, [2002] 1 S.C.R. 227.

arrest warrant) or can be issued separately once the police have located the person and he is in a dwelling house.

115. In *R. v. Mann* (mentioned under article 9),[30] the Supreme Court of Canada stated that individuals may be briefly detained for investigative purposes. Where a police officer has reasonable grounds to believe that his safety or the safety of others is at risk, the officer may engage in a protective pat-down search of the detained individual. In this case, the officers had reasonable grounds to detain M and to conduct a protective search, but no reasonable basis for reaching into M's pocket. This more intrusive part of the search was an unreasonable violation of M's reasonable expectation of privacy in respect of the contents of his pockets.

116. In *R. v. Golden*,[31] the Supreme Court of Canada ruled that, in light of the serious infringement of privacy and personal dignity that is an inevitable consequence of a strip search, such searches are only constitutionally valid at common law where they are conducted as an incident to a lawful arrest for the purpose of discovering weapons in the detainee's possession, in order to ensure the safety of the police, the detainee and other persons, or for the purpose of discovering evidence related to the reason for the arrest, in order to preserve it and prevent its disposal by the detainee. In addition to reasonable and probable grounds justifying the arrest, the police must establish reasonable and probable grounds justifying the strip search. Where these preconditions to conducting a strip search incident to arrest are met, it is also necessary that the strip search be conducted in a manner that does not infringe the protection against unreasonable search or seizure (s. 8 of the *Charter*).

117. In *Aubry v. Éditions Vice-Versa inc.*,[32] the Supreme Court of Canada concluded that the artistic expression of the photograph (of Mrs. Aubry, then aged 17, which was taken in a public place, and published without her consent) cannot justify the infringement of the right to privacy it entails. The right to one's image is an element of the right to privacy under s. 5 of the Quebec *Charter of Human Rights and Freedoms*. If the purpose of the right to privacy is to protect a sphere of individual autonomy, it must include the ability to control the use made of one's image.

Article 18: Freedom of thought, conscience and religion

Canadian Charter of Rights and Freedoms

118. In *Syndicat Northcrest v. Amselem*,[33] the Supreme Court of Canada found that the impugned provisions in the declaration of co-ownership prohibiting construction of a "succah"s on the complainants' balcony, all Orthodox Jews, infringe their freedom of religion. An important feature of our constitutional democracy is respect for minorities, which includes religious minorities. Both obligatory as well as voluntary expressions of

[30] *R. v. Mann*, 2004 SCC 52.
[31] *R. v. Golden*, [2001] 3 S.C.R. 679.
[32] *Aubry v. Éditions Vice-Versa inc.*, [1998] 1 S.C.R. 591.
[33] *Syndicat Northcrest v. Amselem*, 2004 SCC 47.

faith should be protected under the Quebec and the Canadian Charter of Rights and Freedoms. It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance that attracts protection. In order for a triggered right of religious freedom to have been infringed, the interference with the right needs to be more than trivial or insubstantial. The impairment of the complainants' religious freedom resulting from the refusal of the Syndicat to allow the setting up of succahs on balconies is serious. As a result, the enjoyment of their rights to religious freedom have been significantly impaired. The Syndicat's offer of allowing the complainants to set up a communal succah in the building's gardens does not remedy nor does it even address that impairment.

Article 19: Freedom of opinion and expression

119. The *Anti-terrorism Act*'s definition of the core concept of 'terrorist activity' requires that a number of intention and purpose elements be satisfied and the definition protects democratic action by expressly excluding from its coverage 'advocacy, protest, dissent or stoppage of work' (where these are not intended to result in serious forms of specified harm).

Canadian Charter of Rights and Freedoms

120. In *Libman v. Quebec (Attorney General)*,[34] the Supreme Court of Canada dealt with the *Referendum Act*. This Act governs referendums in Quebec and provides that groups wishing to participate in a referendum campaign for a given option can either directly join the national committee supporting the same option or affiliate themselves with it. It also provides for the financing of the national committees and limits their expenses and those of the affiliated groups. Mr. Libman wished to express his opinions on the referendum question and convey meaning independently of the national committees. The Supreme Court concluded that the Act placed restrictions on such persons who, unlike the national committees, cannot incur regulated expenses during the referendum period in order to express their points of view. For similar reasons, the impugned provisions also infringe freedom of association.

121. In *Harper v. Canada (A.G.)*,[35] the Supreme Court of Canada dealt with the provisions of the *Canada Elections Act* imposing limits on third-party spending on advertising in the course of a federal election campaign. The Court concluded that these limits infringe the right to freedom of political expression but are justified in a free and democratic society. In promoting the equal dissemination of points of view by limiting the election advertising of third parties who are influential participants in the electoral process, the overarching objective of the spending limits is electoral fairness. This egalitarian model of elections seeks to create a level playing field for those who wish to engage in the electoral discourse, enabling voters to be better informed.

[34] *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569.
[35] *Harper v. Canada (A.G.)*, 2004 SCC 33.

122. In *Thomson Newspapers Co. v. Canada (Attorney General)*,[36] the Supreme Court of Canada concluded that the provision of the *Canada Elections Act*, which prohibits the broadcasting, publication or dissemination of opinion survey results in the final three days of a federal election campaign, violate freedom of expression and the right to vote as guaranteed by the *Canadian Charter of Rights and Freedoms*. The Court concluded that the limitation cannot be justified in a free and democratic society (s. 1 of the *Canadian Charter*). The current *Canada Elections Act* provisions restricting transmission to the public of new election survey results apply to polling day only.

123. In *R. v. Sharpe*,[37] the Supreme Court of Canada dealt with the issue of the appropriate balance between prohibition of child pornography and the freedom of expression. The Court concluded that the ban on child pornography was constitutional, except for two peripheral applications relating to expressive material privately created and kept by the accused, for which two exceptions can be read into the legislation. The exceptions will not be available where a person harbours any intention other than mere private possession.

124. *R. v. Guignard*,[38] the Supreme Court of Canada stated that consumers also have freedom of expression, which sometimes takes the form of "counter-advertising" to criticize a product or make negative comments about the services supplied. In this respect, simple means of expression, such as posting signs, are the optimum means of communication for these consumers. Given the tremendous importance of economic activity in our society, a consumer's "counter-advertising" assists in circulating information and protecting the interests of society just as much as does advertising or certain forms of political expression. This type of communication may be of considerable social importance, even beyond the purely commercial sphere.

125. In *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*,[39] the union engaged in a variety of protest and picketing activities during a lawful strike and lockout at one of the Pepsi-Cola plants. These activities eventually spread to "secondary" locations, where union members and supporters picketed retail outlets to prevent the delivery of the appellant's products and dissuade the store staff from accepting delivery and engaged in intimidating conduct outside the homes of appellant's management personnel. The Court ruled that secondary picketing is generally lawful unless it involves tortious or criminal conduct.

126. In *U.F.C.W., Local 1518, v. KMart Canada Ltd* and in *Allsco Building Products Ltd. v. U.F.C.W., Local 1288P*,[40] the Supreme Court of Canada explained the fundamental importance of freedom of expression in the labour relations context. Consumer leafleting seeks to persuade members of the public to take a certain course of action through

[36] *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877.
[37] *R. v. Sharpe*, [2001] 1 S.C.R. 45.
[38] *R. v. Guignard*, [2002] 1 S.C.R. 472.
[39] *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156.
[40] *U.F.C.W., Local 1518, v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083 and *Allsco Building Products Ltd. v. U.F.C.W., Local 1288P*, [1999] 2 S.C.R. 1136

informed and rational discourse, which is the very essence of freedom of expression. Peaceful distribution of leaflets is acceptable if consumers are able to determine for themselves what course of action to take without being unduly disrupted by the message of the leaflets or the manner in which it was distributed.

127. In *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*,[41] the Supreme Court of Canada stated that, as conceded by the Crown, the Customs legislation infringes the freedom of expression. However, with the exception of the reverse onus provision, the legislation constitutes a reasonable limit in a free and democratic society (s. 1 of the *Canadian Charter*). The Court emphasized that Customs officials have no authority to deny entry to sexually explicit material unless it comes within the narrow category of pornography that Parliament has validly criminalized as obscene. The appellants were entitled to the equal benefit of a fair and open customs procedure, and because they imported gay and lesbian erotica, which was and is perfectly lawful, they were adversely affected in comparison to other individuals importing comparable publications of a heterosexual nature. The burden of proving obscenity rests on the Crown. Guidelines have been issued following this judgment: http://www.cbsa.gc.ca/E/pub/cm/d9-1-1/d9-1-1-e.html.

128. In *R. v. Lucas*,[42] the Supreme Court of Canada examined the defamatory libel provisions in the *Criminal Code*. The Court found that the impugned provisions contravene the guarantee of freedom of expression since the very purpose of these sections is to prohibit a particular type of expression. However, subject to the severance of part of one requirement of the offence, the Court upheld the provisions as a justifiable limit in a free and democratic society (s. 1 of the *Canadian Charter of Rights and Freèdoms*). The Court referred to article 17 of the *Covenant* and the protection against attacks on reputation. The Court indicated that defamatory libel is so far removed from the core values of freedom of expression that it merits but scant protection.

Article 20: Ban on war propaganda and inciting hatred

129. From 1997-2001, the Canadian Human Rights Tribunal had been looking into allegations that material posted on the Internet by E. Z. could expose Jews to hatred or contempt on the basis of their race, religion and ethnic origin (procedures were delayed by various legal challenges by the respondent). In January 2002, the Human Rights Tribunal concluded that hate has no place in Canada. In its decision, the Tribunal ordered that the hate messages be removed from the site and concluded that the site created conditions that allow hatred to flourish. In its view, the "tone and expression of these messages is so malevolent in its depiction of Jews, that we find them to be hate messages within the meaning of the Act." (Citron v. Zündel, D.T. 1/02 2002/01/18).

130. Amendments to the *Canadian Human Rights Act* came into force in December 2001, clarifying the application of the Act to hate messages on the Internet. The hate

[41] *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120.
[42] *R. v. Lucas*, [1998] 1 S.C.R. 439.

propaganda provisions of the Criminal Code were also amended in December 2001 to allow for deletion of hate propaganda from the Internet (new section 320.1).

131. Since 1970, the *Criminal Code* prohibits: (a) advocating or promoting genocide against an "identifiable group"; (b) inciting hatred against an "identifiable group" by communicating in a public place statements which are likely to lead to a breach of the peace; and (c) communicating statements, other than in private conversation, to wilfully promote hatred against an "identifiable group" (sections 318 and 319). On April 29, 2004, the definition of "identifiable group" which read "any section of the public distinguished by colour, race, religion or ethnic origin" was amended to add "sexual orientation" to the distinguishing factors.

132. The *Anti-terrorism Act* also includes specific provisions intended to send a strong message against acts of hatred and discrimination. The first is a *Criminal Code* amendment authorizing a court within its jurisdiction to order the deletion of publicly available on-line hate propaganda stored on a computer server. A second creates a specific *Criminal Code* offence of public mischief in relation to places of religious worship, or objects associated with religious worship, if the act of mischief is motivated by hatred based on religion, race, colour, or national or ethnic origin.

Article 21: Right of peaceful assembly, and Article 22: Freedom of association

133. Canada's report under the *Convention against Torture* (Articles 12 and 13 – Impartial and immediate investigation and Allegations of torture or abuse by authorities) contains relevant information with respect to the freedom of peaceful assembly.

134. The *Public Service Modernization Act* (adopted in November 2003 and which will come into force in stages) now provides that all employees represented by a union have the right to vote during a strike vote. Previously it was provided that only union members could exercise their right to vote during a strike vote. The restrictions imposed apply only to federal public service employees filling senior management positions and certain non-represented employees.

Canadian Charter of Rights and Freedoms

135. In *R. v. Advance Cutting & Coring Ltd.*,[43] which deals with a union security regime, the Supreme Court concluded that the freedom of association includes a right not to associate.

136. In *Dunmore v. Ontario (Attorney General)*,[44] the Supreme Court of Canada concluded that the exclusion of agricultural workers from the application of the Ontario labour relations regime violates the freedom of association. While there is no constitutional

[43] *R. v. Advance Cutting & Coring Ltd.*, [2001] 3 S.C.R. 209.
[44] *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016.

right *per se* to protective labour relations legislation, the exclusion of a group from such legislation may substantially impact the exercise of freedom to associate. Given the historical reality of agricultural labour relations, the effect of the exclusion is to render agricultural workers substantially incapable of exercising their fundamental freedom to organize. The total exclusion of agricultural workers in all sectors of the industry and from all aspects of the statutory regime is not justifiable in a free and democratic society (s.1 of the *Canadian Charter*).

137. In *Delisle v. Canada (Deputy Attorney General)*,[45] the Supreme Court of Canada ruled that the freedom of association does not include the right to establish a particular type of association defined in a particular statute. Only the establishment of an independent employee association and the exercise in association of the lawful rights of its members are protected. Respect for freedom of association therefore does not require in this case that the appellant (a member of the Royal Canadian Mounted Police) be included in either the regime of the *Public Service Staff Relations Act*, or any other regime, since the Charter protects Royal Canadian Mounted Police members against interference by management intended to discourage the establishment of an employee association.

Article 23: Protection of the family, right to marriage and equality between spouses

138. The 2001 Census shows that marriage remains the predominant family structure in Canada, nonetheless Canadian families of the 21st century continue to be more diverse in how they arrange themselves and their members are more likely to undergo multiple transitions. Family is now defined by Statistics Canada for census purposes as a married or common-law opposite-sex or same-sex couple, with or without children of one or both spouses or partners, or a lone parent – regardless of that parent's marital status – having at least one child living under the same roof.

Immigration and Refugee Protection Act

139. In the *Immigration and Refugee Protection Act* (IRPA), which fortifies the expressed immigration objective of seeing that families are reunited in Canada, the notion of who constitutes a "family" for purposes of immigration to Canada has been modernized to extend beyond spouses to include common-law and conjugal partners of the same or opposite sex. Moreover, sponsored spouses and partners may in certain cases apply to become permanent residents from within Canada, as opposed to overseas. Sponsored spouses, partners and dependent children, and refugees, are exempted from the bar to admission with regard to excessive demand on health or social services. Children may now be sponsored for permanent residence, even if not pursuing studies, up to the age of 22 by their parents.

140. Canada also has a measure to better promote family reunification in the context of IRPA by allowing family members abroad to be processed for permanent residence to Canada

[45] *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989.

at the same time as protected persons who are in Canada. Family members may now also apply, as part of the original application, for a one-year period following the granting of permanent residence to the original family member. This concurrent processing is intended to speed up family reunification of a person granted protected person status in Canada with his or her dependants.

141. The IRPA continues to allow the Minister of Citizenship and Immigration Canada to grant permanent residence or exempt individuals from requirements of the Act on the basis of humanitarian and compassionate grounds including the best interests of a child directly affected by the decision. The impact of separation of family members is one factor considered in a humanitarian and compassionate application.

Canadian Charter of Rights and Freedoms

142. Three provinces (Ontario, Quebec and British Columbia) and one territory (Yukon) in Canada now provide equal access to civil marriage for same-sex couples as a result of court rulings based on the equality guarantees (s. 15 of the *Canadian Charter*). The Government of Canada is fully committed to both fundamental rights identified by the courts as involved here that are guaranteed by the *Charter* - equality and freedom of religion. As a result, the government has referred four questions to the Supreme Court of Canada asking whether draft legislation that would provide equal access to civil marriage for same-sex couples across Canada is constitutional both from the perspective of the equality guarantee and from the perspective of the freedom of religion guarantee, in that it respects the religious beliefs of those called on to perform marriages under provincial jurisdiction. The reference to the Supreme Court also asks whether the opposite sex requirement for marriage is constitutional.

Specific concern of the Human Rights Committee

143. With respect to the Committee's Concluding observation (paragraph 15), Canada's priority for removals is criminals and security threats in particularly those who pose a danger of the security or to the public in Canada. In writing a report for removal on a permanent resident, the following non-exhaustive list of factors are taken into consideration in both criminal and non - criminal cases. The age at the time of landing (whether the permanent resident has been resident in Canada since childhood); the length of residence in Canada after the date of the admission; the extent to which family members in Canada are dependent on the permanent resident; any adverse conditions in the permanent resident's home country that would make removal problematic; the degree to which the permanent resident has firmly established himself / herself in Canada; any prior criminal convictions; and his / her current attitude and the degree to which the permanent resident cooperates with Canadian authorities.

144. Permanent residents, once issued a removal order, have an administrative right of appeal and access to the Federal Court, subject to certain exceptions.

Article 24: Rights of the child

145. Canada provides comprehensive information on its implementation of the rights of the child in its Reports on the *Convention of the Rights of the Child* and in the Responses of Canada to the List of Issues of the Committee on the Rights of the Child. These reports are available at http://www.pch.gc.ca/progs/pdp-hrp/docs/crc_e.cfm.

Specific concern of the Human Rights Committee

146. In its Concluding Observations (paragraph 18), the Human Rights Committee expressed its concern with respect to differences in the way in which the National Child Benefit Supplement for low-income families is implemented in some provinces.

147. The federal/provincial/territorial National Child Benefit (NCB) is the Government of Canada's principal child poverty initiative. Under the NCB, the Government of Canada provides income support with respect to children, whether parents are on social assistance or working, through the National Child Benefit Supplement (NCBS) component of the Canada Child Tax Benefit (CCTB). Since 1998, the Government of Canada has steadily increased its investment in children and their families through the base benefit of the CCTB and NCB Supplement. Further details are provided in the above-mentioned reports.

148. One of the strengths of the NCB is its flexibility to allow provinces and territories to meet the needs of their population while fulfilling the objectives of the initiative. In fact, in addition to services and in-kind benefits, many jurisdictions have chosen to provide additional income support through earnings supplements while others have continued to provide income support with respect to children of low-income families on social assistance. Further, programs offered by the provinces and territories are designed so that low-income families with children do not lose access to services such as assistance with child-care, early childhood services and supplementary health benefits when their parents accept a job.

149. Enriched federal income support is enabling provinces and territories to redirect some of their social assistance resources towards improving benefits and services for low-income families with children. In addition, most jurisdictions are adding new funds, beyond their social assistance savings, so that federal investments to the NCB Supplement are being complemented by additional provincial/territorial investments. Overall, provinces and territories are contributing $777 million per year in services and income support. Details on federal spending in this area are included in the reports mentioned above.

150. Federal, provincial and territorial governments are committed to accountability and transparency. Under the NCB Governance and Accountability Framework, governments have agreed to report annually to the public on the performance of the NCB initiative. Thus far, four jointly prepared NCB progress reports have been released, with a fifth

progress report scheduled for release later in 2004. A comprehensive evaluation of the NCB has been conducted and future evaluation work is planned.[46]

151. The NCB is making progress toward meeting all of its goals, while providing provinces and territories and First Nations with the flexibility to meet their particular needs. For example: in 2000, there was a 5.1 percent reduction in the number of low-income families. These families with children saw their average disposable income increase by 7.5 percent. The NCB is making work financially more attractive than social assistance. This improvement was associated with a reduced dependency on social assistance among families with children.[47] The flexibility of the NCB allowed many jurisdictions to combine the NCB Supplement with provincial and territorial child benefits into a single integrated payment.

152. To inform Canadians on progress made, federal, provincial and territorial governments work collaboratively to produce an annual report. *The National Child Benefit Progress Report: 2002* was released in July 2003. This Report demonstrates that for the fourth consecutive year, the number of low-income families with children has continued its downward trend (post-tax LICOs).

Aboriginal children

153. The National Child Benefit for First Nations was implemented in July 1998 to address the issue of Aboriginal child poverty in Canada. It enables First Nations to develop innovative programs to tailor the National Child Benefit to their communities. A total of $48.76 million has been allocated to this program.

154. The National Child Benefit Reinvestment (NCBR) initiative allows First Nations to address community social development priorities for low-income families with children. Funding is provided in the areas of: child nutrition, child care, home-work transitions, parenting skills and cultural enrichment with the goal of reducing the depth and incidence of child poverty while promoting parental attachment to the labour force. NCBR funding for 2002-3 was $51.8 million.

Other measures

155. In April 2004, the Government of Canada submitted to the United Nations an action plan for children entitled *A Canada Fit for Children* in follow-up to the United Nations Special Session on Children. The National Plan of Action (NPA) is a multi-sectoral, long-term, child-centred framework for children and young people that identifies goals, strategies and actions for the coming decade. The NPA, guided by the *Convention on the Rights of the Child*, reinforces Canada's ongoing commitment to children and their families. *A Canada Fit for Children* is available at: http://www11.sdc.gc.ca/en/cs/sp/socpol/publications/2002-002483/page00.shtml.

[46] Visit the NCB's Web site for information and to view its reports: http://www.nationalchildbenefit.ca
[47] In 2001, 81 percent of single-parent families were led by women in Canada.

156. The Government of Canada has implemented a number of other legislative, administrative and policy initiatives to improve the lives of children. In addition, the *Immigration and Refugee Protection Act* incorporates references to the best interest of the child throughout. Details on initiatives are included in Canada's Responses to the List of Issues of the Committee on the Rights of the Child (September 2003) and in Canada's Response to the United Nations Questionnaire for the Study on Violence Against Children (September 2004).

Article 25: Civic responsibility and political participation

Article 25 (a) and (b) – right to take part in the conduct of public affairs and right to vote

157. In September 2000, a new *Canada Elections Act* replaced the previous one, retaining or revising many existing provisions. The most significant provisions modified the regime for control of third party election advertising, setting limits on such advertising expenses of $150,000 nationwide and $3,000 in a given electoral district. The legislation also established third party registration and reporting requirements.

158. On January 1, 2004, amendments to the *Canada Elections Act* came into force. It extends disclosure and registration requirements for political entities, introduces new limits on political contributions, and imposes a ban on contributions from unions and corporations to political parties and leadership contestants. The amending *Act* also provides for payment of a quarterly allowance to registered political parties, based on the percentage of votes obtained in the previous general election.

159. The *Public Service Modernization Act*[48] (PSMA), assented to on November 7, 2003, will, when it comes into force, bring changes to the provisions dealing with the political activities of public servants. Federal public servants, with the exception of deputy heads of departments and agencies, may engage in any political activity so long as it does not impair or is not perceived to impair the employee's ability to perform his or her duties in a politically impartial manner.[49] A new scheme for approving the political activities of federal public servants will be created.[50] Federal public servants who wish to seek nomination for candidacy in a provincial, territorial or federal election must first obtain the permission of the Public Service Commission. For its determination, the Commission may have regard to the nature of the election in question, the employee's duties and the

[48] S.C. 2003, c. 22. R.A. November 7, 2003. Part 3 of the *Act* pertains to the Public Service Commission and the *Public Service Employment Act*, R.S.C. 1985, c. P-33, as am. (*PSEA*). Sections 14 and 19 of the *PSMA* were proclaimed in force on November 20, 2003 (SI/2003-0178). The remainder of the *PSMA* is anticipated to be brought into force in stages between now and mid-2005. Division 1 of Part 3 enacts a new *Public Service Employment Act*. Division 2 of Part 3 amends the current *Public Service Employment Act*. It is anticipated that Division 2 amendments will come into force prior to Division 1 provisions. The sections already proclaimed in force (ss. 14 and 19) are found in Part 3, Division 2. When Division 1 provisions come into force, enacting a new *PSEA*, they will supersede the current *PSEA* as amended by Division 2.

[49] Section 32 of the current *PSEA*; s.113 of new *PSEA*, once in force.

[50] Sections 32-34 of the current *PSEA*, until the new *PSEA* enacted by section 12 of the *PSMA* comes into force and replaces the current *PSEA*. At that point the new provisions will be found in sections 112-122 of the new *PSEA*.

level and visibility of his or her position.[51] If a public servant is elected to federal, provincial or territorial office, she or he ceases to be a public servant on the date she or he is declared elected.[52] There are similar, but less restrictive provisions for employees wishing to participate in municipal elections (s. 115 of the new *Public Service Employment Act*). These provisions are aimed to uphold the principle of political impartiality in the public service.

Canadian Charter of Rights and Freedoms

160. The Supreme Court of Canada held in *Figueroa v. Canada (Attorney General)* that the requirement in the *Canada Elections Act* that a political party nominate candidates in at least 50 electoral districts in order to obtain and retain registered party status and specified statutory benefits was an infringement of section 3 of the *Canadian Charter*. The infringement was not justified in a free and democratic society (s.1 of the *Canadian Charter*). The Court found that the purpose of the section 3 rights to vote and to run for office was effective representation, including the right to participate meaningfully in the electoral process. For parties who failed to meet the 50-candidate threshold, the resulting denial of the rights to issue tax receipts, to retain unspent candidate election funds and to list party affiliation on ballots diminished the right of citizens to meaningful participation in the electoral process. The challenge was in relation to the *Act* as it read prior to amendments that took effect in 2000 and 2001.

161. In *Sauvé v. Canada (Attorney General)*,[53] the Supreme Court of Canada court struck down the disqualification in the *Canada Elections Act* of all prison inmates from voting. The subsequent amendment to the Act to disqualify only inmates serving sentences of two years or more was also challenged in *Sauvé v. Canada (Chief Electoral Officer)*,[54] and the Supreme Court of Canada held, in 2002, that this too was an unjustifiable infringement of the right to vote guaranteed by s. 3 of the *Charter*. As a result of these decisions, federally incarcerated offenders now have the right to vote in federal and provincial elections.

162. In *Harper v. Canada (Attorney General)*,[55] the Supreme Court of Canada examined a number of provisions in the *Canada Elections Act* regulating the intervention of third parties in the electoral process, as well as the prohibition on advertising on the day of the election. The Court ruled that the limits on third party election advertising expenses set out in the *Act* infringe the right to freedom of political expression but they do not infringe the right to vote protected by s. 3 of the *Charter*. Under s. 3, the right of meaningful participation in the electoral process is not limited to the selection of elected representatives and includes a citizen's right to exercise his or her vote in an informed manner. In the absence of spending limits, it is possible for the affluent or a number of persons pooling their resources and acting in concert to dominate the political discourse,

[51] Section 32 of the current *PSEA*; sub-sections 114(4), (5), (6) of the new *PSEA*, once in force.
[52] Section 32 of current *PSEA*; sub-section 114 (4) of new *PSEA*, once in force.
[53] *Sauvé v. Canada (Attorney General)*, [1993] 2 S.C.R. 438.
[54] *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519.
[55] *Harper v. Canada (Attorney General)*, 2004 SCC 33.

depriving their opponents of a reasonable opportunity to speak and be heard, and undermining the voter's ability to be adequately informed of all views. Equality in the political discourse is thus necessary for meaningful participation in the electoral process and ultimately enhances the right to vote. This right, therefore, does not guarantee unimpeded and unlimited electoral debate or expression. Spending limits, however, must be carefully tailored to ensure that candidates, political parties and third parties are able to convey their information to the voter; if overly restrictive, they may undermine the informational component of the right to vote. Here, the impugned provision does not interfere with the right of each citizen to play a meaningful role in the electoral process. See also *Libman v. Quebec (Attorney General)* and *Thomson Newspapers Co. v. Canada (Attorney General)* under Article 19 of the Covenant.

Article 25 (c) – Access to public service without discrimination

163. Employment in the public service continues to be merit-based and continues to guard against political partisanship. The new *Public Service Modernization Act* aims to enhance the ambit of employment equity initiatives in the federal public service by expressly allowing employers to set membership in a designated employment equity group[56] as a criterion for being hired to a given position.[57]

Policies – Public Service

164. The Government of Canada is committed to establishing a representative and inclusive public service that is a workplace of choice for current and future generations of Canadians. As an employer, the federal Public Service recognizes that it has a duty to accommodate the needs of persons with disabilities in the workplace. The objective of the Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service (http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_852/ppaed_e.asp) is the elimination of barriers that prevent the full participation of potential recruits and existing employees within the Public Service of Canada. Examples include: physical barriers, unnecessary job requirements and unequal access to training and development.

165. The Government of Canada is also committed to making the Canadian public service a representative workplace, reflecting the diversity of the Canadian population, by putting in place programs such as "Embracing Change", which encourages departments at meeting the benchmarks for the hiring, training, and promotion of visible minorities.

[56] "Designated groups" has the meaning given to it in section 3 of the *Employment Equity Act*, S.C. 1995, c.44 : "women, aboriginal peoples, persons with disabilities and members of visible minorities."

[57] S. 34(1) of the new *PSEA*, once in force. This is already done in practice through the PSC's authority to implement employment equity programs in s. 5.1 of the *PSEA*–this new section (34(1)) simply makes explicit the power to target designated groups in hiring.

Canadian Charter of Rights and Freedoms

166. In *Lavoie v. Canada*,[58] the Supreme Court concluded that the preference for Canadian citizens in open competitions for employment pursuant to the *Public Service Employment Act* was contrary to the equality rights but was justified in a free and democratic society (s. 1 of the *Canadian Charter*).

Article 26: Equality before the law

167. In 2000, the Government of Canada enacted the *Modernization of Benefits and Obligations Act*, extending 68 federal laws to common-law opposite-sex and same-sex couples. As a result, the majority of the legal consequences of marriage in federal law now also apply to all couples in committed common-law relationships of at least one year. Federal benefits and obligations available to children of married couples were similarly extended under this Act to children of common-law partners, both opposite-sex and same-sex.

168. Under the *Immigration and Refugee Protection Act*, both married couples and persons in a common-law relationship (opposite-sex and same-sex) are eligible for benefits related to immigration such as sponsoring a partner to immigrate to Canada. The *Citizenship Act* was amended to add the definition of "common-law partner" and by extending to common-law partners certain rights in relation to the residency requirement for Canadian citizenship.

Canadian Charter of Rights and Freedoms

169. In its landmark decision *Law v. Canada (Minister of Employment and Immigration)*,[59] the Supreme Court of Canada stated the proper test for the equality rights (s. 15 of the *Canadian Charter*). Section 15(1) requires three broad inquiries: First, whether there is an inequality determined by whether the law draws a formal distinction between the claimant and others based on one or more personal characteristics OR by failing to take account of the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics. Secondly, whether the differential treatment is based on one or more enumerated in s. 15 or on an analogous grounds. Thirdly, whether the differential treatment discriminates in a substantive sense when measured against the purposes of s. 15. Though the list of factors is not closed, the Court identified some of the most important factors to be considered:

- Pre-existing disadvantage, stereotyping, prejudice, or vulnerability experienced by the individual or group at issue;
- The correspondence, or lack of it, between the ground or grounds on which the claim is based and the actual needs, merits, capacity, or circumstances of the claimant or others;

[58] *Lavoie v. Canada*, [2002] 1 S.C.R. 769.
[59] *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497.

- The ameliorative purpose or effects of the impugned law on a more disadvantaged person or group in society;
- The nature and scope of the interest affected by the impugned law.

170. The case of *Canada (House of Commons) v. Vaid*,[60] dealt with whether the *Canadian Human Rights Act* applies to employees of the House of Commons. The case involved a racial discrimination complaint by one such employee against the then Speaker of the House. The Federal Court of Appeal concluded that the parliamentary privilege claimed in the present instance finds no application herein. The powers claimed in this case are not necessary and, consequently, not within the scope of the privilege as delimited by the doctrine of necessity. In addition, there is no clear intent of Parliament, either explicit or implicit, to shield its managerial activities from the application of the *Canadian Human Rights Act*. The Supreme Court of Canada will hear the case in fall 2004.

171. The Supreme Court of Canada released two decisions in 1999 that broadened the scope of the anti-discrimination protection provided to individuals by human rights legislation in Canada. In *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Association*,[61] the Court held that the employer's defence to a claim of discrimination in employment, the bona fide occupational requirement, required proof, not only of an important employer's interest, but also that the employer had attempted to accommodate the employee to the point of undue hardship. The Court said that employers had to build conceptions of equality into workplace standards. The Court applied the same principles in another case involving the provision of services covered by human rights legislation, more precisely in the case of the denial of a driver's licence on the basis of his physical disability (*British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*.[62] The *Canadian Human Rights Act* anticipated this development in amendments made a year earlier.

172. In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*,[63] the Supreme Court of Canada stated that a liberal and purposive interpretation and a contextual approach support a broad definition of the word "handicap", which does not necessitate the presence of functional limitations and which recognizes the subjective component of any discrimination based on this ground. Courts should adopt a multidimensional approach that considers the socio-political dimension of "handicap". A handicap may be real or perceived, and a person may have no limitations in everyday activities other than those created by prejudice and stereotypes.

[60] *Canada (House of Commons) v. Vaid*, [2003] 1 F.C. 602.
[61] *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3.
[62] *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868.
[63] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000] 1 S.C.R. 665.

Article 27: Religious, cultural and linguistic rights

173. The Committee will find additional information in Canada's periodic reports submitted pursuant to the *Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Economic, Social and Cultural Rights*.

174. In *Reference re Secession of Quebec*,[64] the Supreme Court of Canada stated that the protection of minorities is an underlying constitutional principle. The principle of respecting and protecting minority rights continues to exercise influence in the operation and interpretation of our Constitution. The Supreme Court of Canada more recently said than an important feature of the Canadian constitutional democracy is respect for minorities, which includes, of course, religious minorities. The Court stated that, indeed, respect for and tolerance of the rights and practices of religious minorities is one of the hallmarks of an enlightened democracy. The Court added that respect for minority rights must also coexist alongside societal values that are central to the make-up and functioning of a free and democratic society.[65]

Official languages (French and English)

175. The Government of Canada, through pluriannual agreements entered into with all the provinces and territories, funds part of the additional costs associated with English and French minority language education and English and French training as second languages. In addition, all the provinces and territories also have access to a cost-shared incentive program aimed at improving government services provided to official language minorities in their jurisdictions.

176. In March 2003, the federal government announced the Action Plan for Official Languages. This Action Plan, which includes an accountability and coordination framework, provides over $750 million in investments over five years in three priority areas: education, the development of communities and the public service.

177. In *R. v. Beaulac*,[66], the Supreme Court set out a new principle of interpretation of language rights and indicated that they must be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada. The Court noted the positive nature of language rights, establishing a link with the notion favoured in the area of international law that the freedom to choose is meaningless in the absence of a duty of the State to take positive steps to implement language guarantees. In the same case, the Supreme Court of Canada ruled that the language-of-trial provisions of the *Criminal Code* (the right of any accused to have a trial before a judge, a jury and a prosecutor who speak the official language (English or French) of the accused, the right of the accused to have a judgment written in his official language, and the right of the accused, witnesses and the accused's counsel to be assisted

[64] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.
[65] *Syndicat Northcrest v. Amselem*, 2004 SCC 47. The Court referred to its earlier decision on that point in *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.
[66] *R. v. Beaulac*, [1999] 1 S.C.R. 768.

by an interpreter) create an absolute right, provided a request is made within the time allowed. The Court confirmed that such language rights are completely distinct from trial fairness and, as such, are not contingent upon the ability of the person making the request for interpretation services to understand the proceedings in the other official language. However, several courts have found that the language provisions of the *Criminal Code* do not create language requirements governing the disclosure of evidence, documentary evidence and information.

178. In *Arsenault-Cameron v. Prince Edward Island*,[67] the Supreme Court of Canada set out the scope of the powers of management of the official language minority and indicated that right holders have the exclusive power to decide how they provide minority language educational services. Furthermore, the Court added that both a textual and purposive analysis of s. 23 of the *Canadian Charter of Rights and Freedoms* indicate that instruction should take place in facilities located in the community where children reside. Finally, the Court indicated that s. 23 of the Charter is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority.

Aboriginal people

179. In recent years, closing the gap in life chances between Aboriginal and non-aboriginal Canadians has been a key feature of Speeches from the Throne and federal budgets. The 2003 Federal Budget provided more than $2 billion in additional funds for Aboriginal programs and services in health, education, child-care, infrastructure, policing languages and culture, business development and sustainable environment. Canada's new Prime Minister, upon taking power in December 2003, has placed renewed emphasis on Aboriginal issues. To focus the government's efforts, changes to the infrastructure of government have been implemented, including a new Cabinet Committee on Aboriginal Affairs chaired by the Prime Minister.

Specific Concerns of the Human Rights Committee

180. In its Concluding Observations (paragraph 8), the Committee asked what has been done to implement the recommendations of the Royal Commission on Aboriginal Peoples.

181. Canada responded to the Royal Commission on Aboriginal People (RCAP) in 1998 with Gathering Strength — Canada's Aboriginal Action Plan. The vision articulated in Gathering Strength is straightforward: a new partnership between Aboriginal people and other Canadians that reflects our interdependence and enables us to work together to build a better future; financially viable Aboriginal governments able to generate their own revenues and able to operate with secure, predictable government transfers; Aboriginal governments reflective of, and responsive to, their communities' needs and values; and, a quality of life for Aboriginal people comparable to that of other Canadians.

[67] *Arsenault-Cameron c. Île-du-Prince-Édouard*, [2000] 1 R.C.S. 3.

182. As part of Gathering Strength, the Government offered a Statement of Reconciliation, which acknowledged its role in the development and administration of the residential school system. To the victims who suffered physical and sexual abuse at residential schools, the Government said that it is deeply sorry. The Government also committed $350 million in support of a community-based healing strategy to address the healing needs of individuals, families and communities arising from the legacy of physical and sexual abuse at residential schools.

183. In the same Concluding observation (paragraph 8), the Committee raised the issue of "the practice of extinguishing inherent aboriginal rights".

184. Certainty over ownership and use of lands and resources is one of the primary goals of land claims negotiations. A clear definition of the respective rights and obligations of Aboriginal groups and other citizens is needed in all aspects of the comprehensive land claims process, including the provisions of the Final Agreement.

185. In the past, the Government of Canada required Aboriginal groups to "cede, release and surrender" their undefined aboriginal rights in exchange for a set of defined treaty rights. This approach requires Aboriginal groups to give up all their Aboriginal rights, which many groups consider to be unacceptable by today's standards.

186. In recent years, new approaches to achieving certainty have been developed as a result of comprehensive land claims negotiations. These include the "modified rights model" pioneered in the Nisga'a negotiations, and the "non-assertion model". Under the modified rights model, aboriginal rights are not released, but are modified into the rights articulated and defined in the treaty. Under the non-assertion model, Aboriginal rights are not released, and the Aboriginal group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Aboriginal rights.

Land claims

Comprehensive Claims

187. Sixteen comprehensive claims have been settled in Canada since the announcement of the Government of Canada's claims policy in 1973, the most recent being those of the eight Yukon First Nations, the Nisga'a Agreement, and the Tlicho Agreement.

188. The primary purpose of comprehensive land claims settlements is to conclude agreements with Aboriginal peoples that will resolve the legal ambiguities associated with the common law concept of Aboriginal rights. The objective is to negotiate modern treaties which provide certainty and clarity of rights to ownership and use of lands and resources for all parties. The process is intended to result in agreement on the rights Aboriginal peoples will have in the future with respect to lands and resources. Through the negotiations, the Aboriginal party secures a clearly defined package of rights and benefits codified in constitutionally protected settlement agreements.

189. Comprehensive land claim agreements define a wide range of rights, responsibilities and benefits, including ownership of lands, fisheries and wildlife harvesting rights, participation in land and resource management, financial compensation, resource revenue sharing and economic development projects. Settlements are intended to ensure that the interests of Aboriginal groups in resource management and environmental protection are recognized, and that claimants share in the benefits of development.

British Columbia Treaty Commission Process

190. According to the BC Treaty Commission's 2004 Annual Report, there are now 55 First Nations participating in the BC treaty process (www.bctreaty.net). Because some First Nations negotiate at a common table, there are 44 sets of negotiations. There are 41 First Nations in Stage 4 agreement-in-principle negotiations. Five First Nations are in Stage 5 negotiations to finalize a treaty: the Maa-nulth First Nations, Lheidli T'enneh Band, Sechelt Indian Band, Sliammon Indian Band and Tsawwassen First Nation. The treaty process is voluntary and open to all First Nations in British Columbia.

Specific Claims Resolution

191. In November 2003, the *Specific Claims Resolution Act* received Royal Assent. This important piece of legislation will lead to the establishment of a new independent claims body, known as the Canadian Centre for the Independent Resolution of First Nations Specific Claims (the Centre). The Centre will help First Nations and Canada reach resolution on specific claims and bring greater transparency, efficiency and fairness to the current process.

First Nations Land Management Act

192. In 1996, the *First Nations Land Management Act* gave 14 participating First Nations the option of operating under their own land codes instead of *The Indians Act* and re-established power over land management. Canada has opened the *Act* to 30 First Nations every two years. Over 50 First Nations have already passed Band Council resolutions indicating they also want to work within this framework. The First Nations Land Management Initiative allows participating First Nations the opportunity to develop their own modern and/or traditional tools to manage and protect their reserve lands and resources.

Treaty Commissions

193. The federal government has recently reached agreement with First Nations for the establishment of a Treaty Relations Commission Office in the Province of Manitoba. Consistent with the existing Office of the Treaty Commissioner in Saskatchewan, the Manitoba Commission will engage in public education activities and independent research and facilitate discussions on historic treaty issues. Planning for an Alberta Treaty Relations Commission Office is underway.

194. The Treaty Relations Commissions function as independent and impartial offices, with a mandate to engage in public education activities to improve understanding of the treaty relationship and treaty-related issues, provide facilitation services for discussing treaty issues, and conduct independent research.

The Metis

195. The *R. v. Powley*[68] decision rendered in September 2003 was the first Supreme Court of Canada judgement to address the question of whether Metis groups can possess Aboriginal rights pursuant to section 35(1) of the *Constitution Act, 1982*. The Supreme Court ruled that the Metis community of Sault Ste. Marie possesses a constitutionally protected right to hunt for food. The Supreme Court articulated a test for Metis Aboriginal rights, thereby allowing for the possibility that Metis rights might exist elsewhere in Canada, while setting some parameters around who might exercise these rights.

196. In reacting to the Supreme Court decision, a key component of the federal response will involve participating in multilateral discussions with provinces, territories and Métis organizations. The focus of these multilateral discussions will be on harvesting and related issues (e.g. cooperative management), in accordance with the Supreme Court decision. Preparations for these discussions are well advanced. Improved relations with both Métis organizations and the provinces are anticipated as a result of the multilateral discussions and research, as any harvesting regime that is put in place through this process will be achieved through partnership and cooperative efforts among all players. The federal government is also engaged in legal and policy analysis to better understand the decision and its implications. This work will be key to addressing current gaps in knowledge with respect to Canada's Metis population. For instance, it will inform the government with respect to where Metis communities exist, which in turn will inform the identification of Metis harvesters: a priority identified in the Supreme Court decision which will be essential in establishing responsible and orderly harvesting.

Aboriginal Languages and Cultures

197. The Aboriginal Languages Initiative (ALI), which, since 1998, has supported community-driven activities for the protection, renewal and growth of the Aboriginal languages in Aboriginal communities and in Aboriginal homes terminates in March 2005 and will be succeedeed by the Aboriginal Languages and Cultures Centre (ALCC). A Task Force of 10 Aboriginal people was established in December 2003 and is responsible for making recommendations on a sustainable national strategy for the preservation, revitalization and promotion of Aboriginal languages and cultures, a key component of which is the creation of an ALCC. The recommendations, due by the end of 2004, will be based on consultation findings, related research, and presentations made to them by experts, various Aboriginal representative groups, interested individuals and organizations, as well as on the Task Force's own collective knowledge, expertise, and experience.

[68] *R. v. Powley*, [2003] 2 S.C.R. 207.

198. Canada has established ongoing support for its Aboriginal Languages Accords with each of the Governments of the Northwest Territories and Yukon. Under the respective Accord, both governments agreed that the preservation, development and enhancement of the Aboriginal languages indigenous to that territory was an important mutual goal. This understanding was extended to the Government of Nunavut in 1999. Both Nunavut and Yukon receive $1.1 million annually and the Northwest Territories $1.9 million annually to support territorial activities agreed upon under the terms of the funding agreements with each of the Territorial Governments. Through these agreements, the Territorial Governments have been focussing on the support of Aboriginal community projects and have been working closely with the Aboriginal language groups of their respective territories.

199. Additional information on other initiatives to address Aboriginal language and culture related issues such as the Urban Multipurpose Aboriginal Youth Centres Initiative, the Urban Aboriginal Strategy, the Northern Native Broadcast Program and the Aboriginal Friendship Program, may be found in Canada's reports under the ICESCR.

Part II

Measures Adopted by the Governments of the Provinces

Newfoundland and Labrador

Article 2: Equal rights and effective remedies

200. To ensure equal access to courts the Provincial Court has completed two strategic plans, the first in 1997 and the second in 2000 - they are being implemented successfully. The development of the plans was aided by input from 33 external stakeholders province-wide including aboriginal groups, John Howard Society and the Elizabeth Fry Society.

201. The Provincial Court of Newfoundland and Labrador has an active caseflow management committee working with all criminal justice stakeholders to examine court delay reduction and improve case processing times.

202. Newfoundland & Labrador Human Rights Commission has received a number of complaints on rights protected directly or indirectly by the Covenant. Here is the number of complaints received by the Commission for the fiscal year 2002 – 2003:

2002 – Complaints Filed	
Ground	**Number of Complaints**
Sex / Gender	20
Marital Status	5
Physical Disability	39
Mental Disability	18
Age	4
Sexual Orientation	2
Sexual Solicitation	2
Pay Discrimination	9
Retaliation	1
Total Complaints	**100**

2003 – Complaints Filed	
Ground	**Number of Complaints**
Sex / Gender	10
Marital Status	12
Physical Disability	48
Mental Disability	17
Age	3
Sexual Orientation	6
Sexual Harassment	6
Political Opinion	1
Sex / Pregnancy	3
Race	6
Total Complaints	**112**

203. The new Aboriginal Justice Program in Happy Valley-Goosebay will assist aboriginal people who interact with the Criminal Justice system and will also provide a resource training centre for lawyers representing aboriginal persons in criminal matters. This initiative is supported by federal funding for Legal Aid projects.

Article 3: Equal rights of men and women

204. Provincial parties have made a concerted effort to increase the number of women candidates and those in Cabinet, which is currently 29%. Government also has an active gender balance policy with respect to filling positions on agencies, boards and commissions with the current level of 34% women.

205. In 1998, Newfoundland and Labrador began funding of 7 women's centres with an 8th opened in 2003. In 2001/02 the funding commitment to these services was increased by 66%. The work of these centres is instrumental in ensuring women equal access to rights either through advocacy and referral on an individual basis or by bringing forward systemic or policy issues to the public and private sector, as well as to communities.

206. The province increased funding to the Provincial Advisory Council on the Status of Women in 2002/03. This organization provides a strong external voice for women, which enhances public accountability of government in terms of rights for women.

207. There has been a gender inclusive approach to the development of new legislation and current legislation has been reviewed resulting in removal of language-based gender discrimination.

Representation of Women in Newfoundland & Labrador Public Service for the Years 2002-2003 (not including the health or education sector)

Employee Category	**% Female 2003**	**% Female 2002**
Clerical/Administrative	87.4	86.9
Director	22.3	23.8
Executive	30.0	28.6
Law Enforcement	12.9	12.6
Manager	28.9	27.9
Operations	5.2	5.0
Other	48.6	48.6
Professional	43.5	43.3
Technical	38.2	36.2
Total	**40.0**	**39.6**

Representation of Women in Education Sector for the Year 2003	
Employee Category	**% Female 2003**
Executive	23.0
Administrative	36.0
Professional	54.0
Teachers	69.0
Student Assistants	94.0

Representation of Women in Health Sector	
Employee Category	**% Female 2003**
Allied (Social Work, Speech Pathology)	76.0
Clinical Ancillary (Technicians, Lab Assistants	79.0
System Ancillary (housekeeping, laundry and information systems)	72.0
Diagnostic (Lab, X-ray)	73.0
Management	71.0
Nursing (LRN & RN)	93.0

Article 6: Right to life

208. The issue of Fetal Alcohol Syndrome/Fetal Alcohol Effects (FAS/FAE) has been recognized as a provincial priority. One of the components of the A Healthy Baby Clubs implemented through Early Childhood Development (ECD) program funding addresses the issue of reduction of alcohol and drug use during pregnancy in several high-risk communities throughout the province. Family Resource Centres/Healthy Baby Clubs provide programs to at risk pregnant women to help improve their health and birth outcomes. Nutrition education, food supplements and a supportive environment are key components of these programs.

209. A Labrador Innu Comprehensive Healing Strategy, a joint strategy with the federal government has been in place for the past three years to address current health and socio-economic conditions of the Innu in Labrador. The strategy is to address, among other issues, the critical health issues being faced by the Innu.

210. The National Homelessness Initiative (NHI) has invested $4.2 million in St. John's community-based projects between 2000-2002 through a Multi-Stakeholder Community Plan. This plan is also supported by contributions from the provincial government, the municipal government, as well as community contributions. Actions taken under the 2000-2003 action plan include construction of a shelter for aboriginal persons, approval for construction of a shelter for young men co-located with a multi-agency youth services site and linked to new supportive housing for youth, new transitional housing for women and children escaping violence, improved transitional housing for men and women with histories of mental illness, addictions or imprisonments and a new shelter for men and women in Labrador City. The National Homelessness Initiative has been renewed for 2003-2005, with a further $2.1 million allocated for St. John's under a new Community Plan, and an additional $1.6 million for communities outside St. John's through the Regional Homelessness Fund.

211. Residential Rehabilitation Assistance (RRAP) Conversion Program 2000-2003 assists in the creation of affordable housing for low-income households by providing funding to convert non-residential properties into affordable, self contained units.

212. The Shelter Enhancement Program provides funding to assist in renovation and upgrading emergency shelter space and second stage housing.

213. The Affordable Rental Housing Program, a bilateral agreement between Canada and Newfoundland and Labrador will provide $30 million to create new affordable rental housing through a 50/50 cost shared arrangement between Canada Mortgage and Housing Corporation and Newfoundland and Labrador Housing Corporation.

Article 7: Protection against torture

214. As the result of a complaint made by an inmate that he had been confined in a restraint chair contrary to the policy of the Corrections Division, an investigation was initiated which concluded that the governing policy needed to be revised to ensure a greater degree of transparency and accountability. The John Howard Society was invited to participate in the review through which a new policy on the use of the restraint chair was formulated. The policy now limits the use of the device to very specific circumstances, requires advance authorization by a senior manager, requires ongoing audiovisual surveillance and obliges the Superintendent of Prisons to review the circumstances surrounding each occasion when the device is engaged.

Article 10: Treatment of persons deprived of liberty

215. In both the Youth Custody and Adult Custody program sectors, rehabilitative programs and initiatives are deemed to be very high priorities. Each adult and youth offender is assessed on admission to custody for the purpose of identifying program needs, particularly those criminogenic programs which are proven to be effective in reducing recidivism. Core programs in this category include Reasoning and Rehabilitation (social cognitive thinking), Substance Abuse, Family Violence, Sexual Offending and Anger

Management. Adult Basic Education programs are offered in all adult and youth custody facilities.

216. The Division of Corrections and Community Services has completed a comprehensive review of the Use of Force protocol. A new, updated version of the Use of Force policy and procedures has been constructed, including the incorporation of sections dealing with legislative authority, guiding principles, the use of force continuum, the situation management conceptual model, post incident debriefing and the conduct of investigations. Additionally, selected personnel have received intensive training in the use of force and will be responsible for conducting training for all corrections personnel.

Article 14: Fair trial rights

217. The Divisional policy directive governing internal inmate disciplinary tribunals within the Adult Custody sector has been significantly revised with the incorporation of several additional protections available to adult offenders in custody:

- clarification of the specific types of disciplinary offences for which an inmate may be held accountable;
- a categorization of offence seriousness and associated limitations on the extent of penalties which may be imposed;
- a requirement for full disclosure except where such would compromise personal safety or institutional security;
- strict limitations on the use of pre-hearing detention;
- incorporation of additional safeguards and protections for the inmate during the disciplinary process; and
- an appeal process.

218. Recent case law has resulted in developing new guidelines for maintaining the independence of the judiciary through financial security. The court's requirement that the government provide logical reasons for failing to comply with the salary recommendations of an independent commission is effective in balancing the need for judges to be economically independent from the government and governments need to make prudent and realistic fiscal decisions. The approach, rooted in simple rationality, strengthens the independence of the judiciary.

Article 17: Right to privacy

219. The *Income and Employment Support Act*, SNL 2002 ch. I-0.1 (to be proclaimed) will further ensure equity in the administration of all departmental programs for any person deemed eligible under a needs-tested program. It ensures the privacy and confidentiality

of information but upon consent allows for appropriate exchange of information for purposes of determining eligibility. Section 4 of the Act proposes access to services in a timely manner, and requires that all applicants and recipients be treated with dignity and respect in accordance with new service standards being developed by the department. The supplementary regulations to this Act have been compiled to be user-friendly and transparent in nature.

220. The *Access to Information and Protection of Privacy Act* (ATIPP), SNL 2002 ch. A-1.1 (to be proclaimed) was enacted on March 14, 2002. When proclaimed ATIPP will regulate the collection, use and disclosure of personal information under the custody or control of public bodies. The Act gives an individual the right to request correction of personal information and a public body is required to make every reasonable effort to ensure that personal information is accurate and complete. The privacy provisions contained in Part IV of the Act bring Newfoundland and Labrador in line with other Canadian jurisdictions that have enacted access/privacy legislation. Part IV of the ATIPP enhances the protection of personal privacy, encourages better management of personal information and provides greater openness to individuals seeking their own personal information.

Article 22: Freedom of association

221. In 2001, the Chairmanship of the Labour Relations Board was made a full time five year term position. This allows the Board to resolve issues, including union certification in a more expedient manner.

Article 24: Rights of the child

222. The Division of Corrections and Community Services has implemented a number of new programs designed to facilitate the reintegration of young offenders into the community:

- The most significant initiative is the implementation of a Pre-Trial Services program - Bail Supervision which is intended to provide a non-custodial option for supervising accused young persons in the community pending trial. As an alternative to remanding a young person in custody, the youth court now has the discretion of assigning an accused young person to the Pre-Trial Services program which, in effect, is a community support and supervision resource through which the young person and the family are provided with the necessary supports and assistance while the young person continues to reside in the home and until disposition of the case.

- A new position of Family Therapist has been created through which a highly qualified therapist is engaged in an intensive process of dealing with family dysfunction and improving family dynamics as part of the strategy to reintegrate the young person in the community.

- The Division has implemented a broad strategic framework for the reintegration of young offenders who are detained in secure custody facilities. A comprehensive case

management plan is developed in consultation with various community resource agencies in the interest of ensuring a fully collaborative and coordinated approach for assessing criminogenic needs and implementing the community reintegration plan.

223. The infant mortality rate in Newfoundland and Labrador has continued to decline. Child health issues are addressed through universal public health programs, including Healthy Beginnings and Child Health Clinics. Public Health Nurses identify children with health issues and make referrals for appropriate interventions.

224. Custody levels of young offenders have been reduced substantially over the past year and the continuum of community-based services aimed at rehabilitation and reintegration has been enhanced. This has been achieved through the impacts of the new federal *Youth Criminal Justice Act*, and the reprofiling of financial resources from the custody system to community services and programs, which act as alternatives to custody.

225. Children's rights have been advanced through legislation in recent years:

- The *Child and Youth Advocate Act*, SNL 2001 ch. C-12.01 established an office of the child and youth advocate to ensure that the rights and interests of children and youth are protected and advanced and that their views are heard.

- The *Adoptions Act*, SNL 1999 ch. A-2.1 allows for direct placements of children with adoptive parents and an open records system for adult adoptees and their birth parents who are seeking contact.

- The *Child Care Services Act*, SNL 1998 ch. C-11.1 provides for adequacy and consistency in regulated child care.

226. The *Child, Youth and Family Services Act*, SNL 1998 ch. C-12.1 recognizes the child's right to personal safety, health and well being and provides mechanisms for protective interventions and family support when needed. The Act allows services to be provided to youth aged 16-18, a group not previously covered under provincial child welfare legislation.

Article 26: Equality before the law

227. During the last number of years government negotiated Memorandums of Understanding with the various unions to conclude Pay Equity. These MOUs bring to a conclusion the original Pay Equity Agreement which was signed in 1988. As part of the original agreement, all classes covering approximately 11,000 employees that were receiving pay equity adjustments were placed on scale and pay equity is now fully implemented and integrated into the salary scales. This effectively concludes pay equity for the following groups: General Government Sector, which includes the following employers: Government Departments, School Boards, College of the North Atlantic Support Staff, the Public Libraries Board, and the Newfoundland Liquor Corporation (April 1999); Health Care Sector Part I (March 2000), Nurses (January 2002) and AAHP (January

2002). The only group that is not concluded and still receiving pay equity adjustments is NAPE LX. This is a result of an arbitration award that the Union is seeking to overturn in the courts. This affects approximately 80 employees.

228. In 2003 the Department of Health and Community Services sponsored a workshop, Cross Cultural Collaboration: Supporting Immigrant Families of Newfoundland and Labrador. The workshop identified challenges and concerns that immigrants and refugees face and discussed possible solutions.

229. One of the ways in which government, as an employer promotes diversity and human rights in the workplace is through its Respectful Workplace Program. This initiative is based on the principle that all employees have a right to a workplace that is respectful and tolerant of diversity and difference, supportive of dignity, self-esteem and productivity of every individual, and free of harassment. This joint labor-management initiative supports diversity, clarifies expectations for respectful behaviour in the workplace, and develops resolution mechanisms for conflict. It also seeks to provide support and clarify options for employees who feel they have been harassed. A key component of the Program is the education and training of government managers on their role in creating a respectful workplace for all employees. This includes the management of diversity in the workplace, and the prevention of harassment.

Article 27: Religious, cultural and linguistic rights

230. Following the Royal Commission on Aboriginal Peoples Report, the Province has continued to work cooperatively with the Government of Canada and aboriginal groups in Newfoundland and Labrador to achieve common objectives. These include:

- The signing in 2002, of agreements with Inco/Voisey's Bay Nickel Company (VBNC) Canada, the Innu Nation and the Labrador Inuit Association to enable the Voisey's Bay mineral development to proceed in a manner consistent with the objectives of all parties and maximizing benefits for the Innu, Inuit and other people of the province;

- Amendments passed in 2003 to the provincial *Human Rights Code* to protect the employment preferences contained in the Innu and Inuit Impact and Benefits Agreements (IBAs) with Inco/VBNC against challenge;

- The initialling of the Labrador Inuit Land Claim Final Agreement on August 29, 2003;

- Continued tripartite negotiation towards an Agreement-in-Principle on the Innu Nation land claim;

- Continued participation with Canada and the Innu Nation in implementing the Comprehensive Innu Healing Strategy, including registration of the Innu under the

Indian Act on November 21, 2002, and the creation of Reserves at Natuashish (expected in December, 2003) and Sheshatshiu (expected in 2004);

- Amendments passed in 2003 to the provincial *Expropriation Act* to enable the Province to expropriate land for the purposes of the federal government creating a First Nations Reserve;

- As announced in November 21, 2003, negotiations with Canada and the Federation of Newfoundland Indians (FNI) on the pursuit of a landless band concept to enable off-reserve Mi'kmaq to access federal programs and services for Registered Indians; and

- A commitment to participate in self-government talks with Canada and the Miawpukek First Nation.

231. The Province of Newfoundland and Labrador and Canada are participating in a Comprehensive Claims process with the Innu Nation and Labrador Inuit Association. The treaties that are expected to result from these negotiations will help enable the Inuit and Innu to protect and maintain their language and culture.

232. While the federal government provides funding programs for the promotion of aboriginal language and culture, the province takes steps to ensure that the K-12 curriculum is culturally sensitive and appropriate. The Government of Newfoundland and Labrador supports the introduction of aboriginal-specific curriculum in schools in Aboriginal communities and, more generally, the incorporation of aboriginal history and culture in the provincial curriculum. The province supported the introduction of Mi'kmaq, Innu and Inuit language and culture to the curriculum provided in Conne River and the Innu and Inuit communities, respectively, the province is in discussions with the Federation of Newfoundland Indians (FNI) to discuss how the history and culture of the Mi'kmaq might be better reflected in the provincial curriculum. In 2003, the Department of Education introduced a new religious education program in the elementary and intermediate levels that incorporated more about Aboriginal spirituality. The content is specific to Aboriginal groups in Newfoundland and Labrador, and Aboriginal people were consulted in the preparation of these texts. Aboriginal groups are also being consulted in the preparation of a new Grade Eight social studies text, which is about the history of Newfoundland and Labrador. The Historic Sites Association of Newfoundland and Labrador has launched a poster series, Aboriginal Peoples of Newfoundland and Labrador, which will be made available to schools throughout the Province. This poster series is intended to heighten student's appreciation of the Aboriginal peoples of Newfoundland and Labrador, and to enable Aboriginal students to see themselves and their cultures reflected directly in the school curriculum.

233. The Department of Tourism, Culture and Recreation has involved Aboriginal groups in the development of displays that allow the presentation of their own stories at The Rooms, a new museum and archive centre and the Labrador Interpretation Centre.

Prince Edward Island

Article 2: Equal rights and effective remedies

234. The Prince Edward Island (P.E.I.) *Human Rights Act* was amended in December 1997 to change the complaint process from a Board of Inquiry system to a Human Rights Panel System. The Executive Director of the Human Rights Commission can now investigate, settle, dismiss/discontinue and/or refer complaints to an internal panel hearing, made up of one or more Human Rights Commissioners. Complainants can request a review by the Chairperson of the Commission of the Executive Director's decision to dismiss a complaint. The panel decision is final and binding on both parties but either party can make an application for judicial review by the Supreme Court of P.E.I. The panel may also file an order with the Supreme Court in the appropriate division that is enforceable in the same manner as an order of the Supreme Court of P.E.I., Trial Division. This amendment removed the Minister Responsible for the *Human Rights Act* from having involvement with the complaint process.

235. The Act was also amended to allow any person, other than the Commission or an employee of the Commission, who has reasonable grounds for believing that a person has contravened the Act to make a complaint to the Commission rather than only allowing the aggrieved person to make a complaint. This change has allowed for family members and/or friends of vulnerable individuals to submit human rights complaints on the vulnerable individuals' behalf.

236. In 1998, family status, sexual orientation, and source of income were added as a prohibited grounds of discrimination in all areas listed under the P.E.I. *Human Rights Act*. Family status includes protection for both women and men who have family obligations such as children or aging parents; sexual orientation includes protection for gay, lesbian and bisexual individuals; and source of income provides protection for individuals receiving social assistance benefits. Criminal conviction was also added as a prohibited ground of discrimination in the area of employment. Individuals who have previous criminal convictions that are not related to the employment position they are seeking or are currently employed in are now protected under the act. The *Human Rights Act* is deemed to prevail over all other laws of the province.

237. In the fiscal year 2001-2002, 68 new complaints were filed at the Commission and 39 complaints were carried over from 2000-2001 representing a total of 107 active complaints for the 2001-2002 fiscal year. The ground of physical and mental disability accounted for the largest proportion of complaints received by the Commission.

238. In the fiscal year 2002-2003, 65 new complaints were filed at the Commission and 55 were carried over from the 2001 - 2002 year representing a slight increase in complaints across most grounds of discrimination. The ground of disability is still the largest proportion of complaints received by the Commission. Additional information on the

Commission, its programmes and its complaint resolution process can be found at http://www.gov.pe.ca/humanrights/.

Article 3: Equal rights of men and women

239. The addition of family status as a prohibited ground of discrimination under the P.E.I. *Human Rights Act* has had an impact on women, in particular, those who have been vulnerable to this type of discrimination, especially in the area of employment and the leasing of property.

Article 6: Right to life

240. The Bedford MacDonald Trust is managing funding from the Federal Homelessness initiative in Prince Edward Island (P.E.I.). This money has been used primarily to fund shelters in Charlottetown and Summerside, P.E.I. There is a second phase to this initiative that is currently underway.

241. P.E.I. also has an Affordable Housing Agreement with the federal government. The purpose of this is to support development of affordable housing for low to moderate income Islanders. There are 2 projects currently receiving funding and a number of others in various stages of development.

Article 17: Right to privacy

242. The *Social Assistance Act* Section 6(1) and (2) address protection of privacy for Social Assistance clients:

> 6.(1) The Minister, Directors and social assistance agencies may maintain records containing information gathered in the administration of this Act.
>
> (2) Subject to this section and the regulations, information contained in a record may be disclosed where
>
> (a) the disclosure is with the written consent of the person to whom it pertains;
> (b) the disclosure is made for the purposes of a criminal investigation or criminal proceedings;
> (c) the disclosure is made for the purposes of an investigation or court proceedings under this Act;
> (d) the disclosure is made to a person or organization providing social assistance services in this province or in another jurisdiction in Canada;
> (e) The information is provided to a person or organization for the purposes of maintaining it in information systems to be used for the administration of this Act;
> (f) The disclosure is an aggregate of information which does not identify particular persons; or

(g) the disclosure is, in the opinion of the Minister, essential for the administration of this Act [...]

The Act was proclaimed August 4, 2003.

243. The Freedom Of Information and Protection of Privacy came into force in November 2002 for the Department and November 2003 for the Health Regions. The Act provides new guidelines for the use of personal information by government. There are several important provisions:

- public bodies can collect and use personal information only for purposes authorized under an Act; for law enforcement purposes or for operating programs or activities;
- people must be informed about the authorization for collecting information and how that information will be used at the time the information is collected;
- generally information must be collected directly from individual to whom it relates;
- an individual may be asked to give consent for their information to be used for other purposes.

This legislation also addresses issues of sharing information and protection of privacy.

244. With regard to the procedures for identifying recipients of social assistance, P.E.I. does not use fingerprint or retinal scans, nor does it have any plans to do so in the near future.

Article 24: Rights of the child

245. The Safer Communities Initiative, administered by the National Crime Prevention Centre (NCPC), was launched in June 1998 as part of the Government of Canada's National Strategy on Community Safety and Crime Prevention. The National Strategy is aimed at developing community-based responses to crime, with a particular emphasis on children and youth, Aboriginal people, and women. The Safer Communities Initiative is comprised of four funding programs: the Crime Prevention Investment Fund, the Crime Prevention Partnership Program, the Community Mobilization Program and the Business Action Program on Crime Prevention. Under the Community Mobilization Program, the NCPC has provided $345,280 to help fund 27 crime prevention projects in P.E.I..

Article 25: Civic responsibility and political participation

246. The new prohibited grounds added to the P.E.I. *Human Rights Act* in 1998 include the area of volunteering, including political organizations, and membership in professional, business or trade, and employment organizations.

Nova Scotia

Article 2: Equal rights and effective remedies

247. The Office of African Nova Scotian Affairs was established in August 2003, in response to the Final Report on Consultations with the African Nova Scotian Community (July 2001). An interim Executive Director was appointed in November 2003. The purpose of the office is to provide advisory and consultative services to government departments to help develop and implement legislation, policies and programs in support of equality of opportunity for Black people in Nova Scotia. It functions as both an advisory council and a government agency.

248. Nova Scotia has provided additional funding for legal aid and negotiated new agreements for legal aid funding with the federal government.

249. The Self-Represented Litigants Project is a major initiative of the Court Services Division of the Department of Justice. The objective is to provide coordinated and accessible services for self-represented litigants and to develop a consistent strategy to improve services to self-represented litigants that are effective and understandable. The program develops realistic programs and tools to assist self-represented litigants at all levels of court administered by the Province. The program will improve current court services in practices and protocols for self-represented litigants and staff, in order to increase the efficiency of court administration and proceedings in all levels of court administered by the Province.

Article 3: Equal rights of men and women

250. Nova Scotia continues to have a serious under-representation of women holding elected office. To address this problem, the Nova Scotia Advisory Council on the Status of Women designed and offered workshops to attract more women to political life. Seventy-six participants in five regions of the province rated the workshops very favourably. Women's plans for future activity increased in four political arenas: community (38% increase), municipal (54% increase), provincial (37% increase), and federal (37% increase). In follow-up, the Advisory Council will develop a women's campaign school, using its recently revised popular publication, *Votes for Women: A Political Guide Book for Nova Scotia Women*, which will be released in the 2003-04 fiscal year.

251. In November 2001 the *Domestic Violence Act* was enacted. The Act allows victims to apply to justices of the peace for temporary orders that protect their safety as well as their economic well-being. The order may be made to ensure the immediate protection of the victim. In the first three months, 78 victims applied to the courts for orders.

Article 6: Right to life

252. September 2002, the governments of Canada and Nova Scotia announced a $37.26-million Affordable Housing Program Agreement. Approximately 1,500 affordable housing units will be created or will undergo renovation in Nova Scotia over the next five years. More Nova Scotians will be able to gain access to affordable housing. Funding under this agreement will be used for provincially designed programs that will support the creation of new rental housing and home ownership. It will also support the rehabilitation or conversion of existing housing, which is at risk of loss from the housing stock.

253. The Metro Turning Point Society built a new shelter to meet the needs of homeless men in the Halifax area in 1999. The society provides overnight shelter, daytime support and trustee services to homeless men. The new facility provides space for a range of program activities, including supportive counselling, crisis intervention, a day service resource area, outreach street services, medication control, trustee money management, housing, health and legal support. The Department of Community Services and Halifax Regional Municipality support and fund this initiative.

254. The *Employment Support and Income Assistance Act* came into effect August 2001. The Act replaced a complex municipal and provincial support systems with a single provincial system designed to provide better supports to help people become self-reliant within their capacity to do so. Employment supports coupled with income assistance have been enhanced to include more money for transportation and child-care. The Employment Support and Income Assistance program is transparent and accessible.

Article 9: Right to liberty and security of person

255. A new secure treatment center for children and youth with emotional and behavioural problems who require out-of-home placements has been constructed. Secure treatment is a program to help stabilize children with behavioural and emotional problems so they can eventually return to their home communities and families. It is a temporary stop, and children will stay at the centre for up to 90 days. The Center was built so that the children and youth can remain close to their families and home communities and not have to go out of the Province. The centre will become part of a range of programs for children and youth which includes secure treatment, foster care, group homes, residential treatment centres and the parent counsellor program.

256. A new federal Youth Criminal Justice Act and Provincial Youth Justice Act became effective April, 2003, changing the way young offenders are managed both in custody and while under community supervision. The province has adopted new policy, procedures and programs to meet the requirements of these new legislative programs, there also came into force in April 2003. In a typical year, nearly 3,000 youth cases are brought before the courts in Nova Scotia. The new legislation is based on the principle of keeping young offenders separate from adults.

Article 10: Treatment of persons deprived of liberty

257. A new Central Nova Scotia Correctional Facility, co-located with the East Coast Forensic Psychiatric Hospital, commenced operation in 2001. The correctional facility can house 272 offenders, including 48 female offenders housed in a separate unit. State of the art security features include enclosed high security exercise yards, improved sight lines and single-cell design, which provide a safer, more secure atmosphere.

258. The East Coast Forensic Psychiatric Hospital will be a place for research and teaching, as well as for treating individuals who suffer from serious psychiatric disorders. The forensic psychiatric hospital will consist of two rehabilitation units with 30 beds in each; a mentally-ill offender unit, providing 12 beds for treatment and 12 for court- ordered assessments; and two transition units, each with 7 beds. In addition, the hospital will administer a community program that provides strict guidelines and supervision for patients who have been discharged into the community.

Restorative Justice Program

259. The Restorative Justice Program is a partnership between government and communities to develop restorative justice capacities in Nova Scotia. The program uses existing youth justice agencies to deliver Restorative Justice Programs. After a trial period, the Program expanded province-wide in September 2001.

260. Restorative justice provides community members with an opportunity to voice their feelings and concerns and show disapproval of the offender's behaviour without branding them as outcasts; and be actively involved in a process that holds offenders accountable and repairs the harm caused to the victim and the community. Restorative programs place a high value on face-to-face meetings between the victim, offender and community. During the course of the meeting, each party is given an opportunity to tell the story of the crime from their own perspective, and talk about their concerns and feelings. The meeting helps the parties develop an understanding of the crime, of the other parties, and of the steps needed to make amends. The meeting concludes with an agreement outlining how the offender will make reparation. Reparation can include monetary payment, service to the victim, community service or any other outcome agreed upon in the process. Terms of the agreement can be personalized to take into consideration the individual circumstances of the offender.

Article 14: Fair trial rights

261. The *Court and Administrative Reform Act*, 1996, c. 23, provides that certain orders of a board, tribunal or commission may be enforced in the same manner as a judgment of the Supreme Court of Nova Scotia.

Article 17: Right to privacy

262. In October 2002 the Nova Scotia Advisory Council on the Status of Women submitted a brief in response to a Department of Justice Canada consultation on the inclusion of voyeurism as an offence under the *Criminal Code* of Canada. New technologies for viewing, recording, and distributing pornographic material can be and are being used to create pornographic images without the consent or even knowledge of the woman portrayed. Voyeurism is also of concern as it is estimated that 20% of perpetrators go on to commit sexual assault. The Council's recommendation to include voyeurism in the *Criminal Code* is therefore in the interest of protecting victims from humiliating and exploitive invasions of their privacy and of preventing further criminal acts such as sexual assault.

Article 24: Rights of the child

263. Nova Scotia provides low-income families with an integrated child benefit, which combines the Nova Scotia Child Benefit and the Canada Child Tax Benefit into one monthly payment, whether they receive income assistance or are in the paid workforce. Nova Scotians are receiving the full amount of the National Child Benefit available to them. The National Child Benefit Supplement and Nova Scotia Child Benefit were introduced in 1998. In 2001 Nova Scotia ceased to offset the National Child Benefit Supplement from income assistance payments to families. All eligible families filing a tax return receive the child allowances. Children's allowances were removed from the income assistance program and replaced by combining them with the National Child Benefit and Nova Scotia Child Benefit programs. Now, individuals on assistance do not have to worry about losing their children's benefits if they leave the system to enter the work force. These changes also recognized children in low income working families by providing the Nova Scotia Child Benefit Program to all families with annual incomes of $20,921 or less.

264. Since 2000, Nova Scotia has created 190 portable subsidized child-care spaces. A portable space means a family can choose any licensed child-care centre that provides full-day services and that has signed a letter of agreement with the Nova Scotia Department of Community Services. These spaces are designated for children up to 12 years of age. Since portable subsidized child-care spaces are assigned to the child and not to the child-care centre, the space and the subsidy follow the child if the family has to move within the province. Portability means parents can seek work outside their home community without losing their subsidized child-care space.

Article 27: Religious, cultural and linguistic rights

265. In 1991 the then Minister of Education, a Francophone, was assigned responsibility for reporting to the Cabinet on matters relating to Acadian Affairs. The post has since been held by the Francophone member of the Executive Council. In 1993 a coordinator of Acadian Affairs was appointed. The mandate of Acadian Affairs is to help anticipate, stimulate and support the socio-economic development of the Acadian population of

Nova Scotia. Its core business functions are consulting with federal and provincial departments and agencies; consulting with Acadian institutions, organizations and community groups; advising on policies and initiatives at the intergovernmental level; and providing support services.

266. In 1999 the Minister of Justice became Minister responsible for Aboriginal Affairs. In 2000 the Deputy Minister of Aboriginal Affairs was replaced by a Chief Executive Officer. The object and purpose of Aboriginal Affairs are to facilitate and promote a coordinated approach within government on matters relating to aboriginal people; represent the interests of Nova Scotia in intergovernmental, bilateral and trilateral initiatives and negotiations; and provide research analysis and policy advice on aboriginal issues.

New Brunswick

Article 2: Equal rights and effective remedies

267. The *New Brunswick Human Rights Act* was last amended in 1996. These amendments gave effect to some of the recommendations for procedural reform of the Act made in the Government-commissioned study of 1989, *Towards a World Family: A Report and Recommendations respecting Human Rights in New Brunswick* (The Ferris Report). The amendments addressed three significant issues:

- A section was added to the Act allowing for the delegation of decision-making in complaints from the Commission to its Director;
- Amendments were brought in allowing for the referral of human rights boards of inquiry to the Labour and Employment Board for adjudication; and
- The Human Rights Commission was given carriage of complaints in matters referred to Boards of Inquiry.

268. The first amendment has meant that complaints that are settled, withdrawn, abandoned or clearly not within the Commission's jurisdiction, can be dealt with in summary fashion at the Director's level. Decisions at this level are subject to review by the Commission. In 1997, the Commission adopted a public guideline governing its process requirements in the exercise of delegated authority. In November 2001, the guideline was amended to further delegate to the Director authority to dismiss complaints that are clearly without merit.

269. The second amendment has facilitated the appointment of Boards of Inquiry. While in the early 1990s there were several years where no complaints were referred to a Board of Inquiry, since the 1996 amendments, the number of Board referrals has increased steadily. These first two amendments and related administrative practices have greatly reduced the time required to respond to complaints and improved access to the Commission's compliance process.

270. The last 1996 amendment gives the Commission carriage of complaints before the Board and confirms the Commission's separate standing as the defender of the public interest in ensuring that the Act is not infringed. While the Commission does not have authority to initiate complaints on its own motion, its privileged status as a party before the Board with carriage of the matter underscores the public commitment to human rights enforcement. Furthermore, as the Commission typically participates as a full party in Board proceedings represented through its counsel, complainants often rely on Commission's counsel in presenting their case. In the absence of legal aid assistance to complainants, the Commission's enhanced role at Boards is also an important measure in ensuring access to justice.

271. The New Brunswick Human Rights Commission (HRC) was also set up to educate the public about their rights, to advance the principle of equality, and to receive and attempt to resolve complaints of discrimination in various sectors: employment, services, accommodations and facilities, purchase or lease of real property, publication of signs, symbols or representations or membership in trade, business or professional associations. Approximately 75 percent of complaints received stem from the employment sector. Over the past ten years, physical disability and mental disability complaints have edged out sex discrimination and sexual harassment complaints as the most commonly cited ground of discrimination in complaints brought before the Commission.

272. The Human Rights Commission has three education officers on staff who have the responsibility to provide information and education to the people of New Brunswick on the *Human Rights Act* and on human rights in general. The strategy adopted by the Commission is to focus on priority areas for education in any particular year. The most recent priorities are the duty of employers to accommodate people with a disability and on the business case for human rights in general. The Commission also provides information to schools and teachers throughout the province. Callers to the Commission with complaints or questions are also provided with information on their rights under the Act and the process to follow in making a formal complaint.

273. In addition to the legislative changes outlined above, the Commission has also modified its practice in terms of recommended ranges of settlement amounts to compensate victims of discrimination for moral or general damages arising from their experience of discrimination. Until 2001,the broad range of general damages sought by the Commission in cases of discrimination, in accordance with its internal Guideline on Remedies, was between $2000 and $10,000. While New Brunswick has never had any ceiling on monetary awards of this nature, other, larger jurisdictions in Canada, have and this in turn has had a dampening effect on the jurisprudence. Awards granted by human rights tribunals in jurisdictions where no legislated ceiling was in place tended to follow more established jurisprudence from jurisdictions where the amount of such awards was limited. Over the past decade these legislated ceilings have been removed or augmented considerably, either by statute or by judicial interpretation, yet recent awards do not yet fully reflect these legislative and jurisprudential developments.

274. In New Brunswick the courts are equally accessible to all. Legal aid is available to all qualified citizens and landed immigrants; neither race, ethnicity nor culture are considered in determining eligibility.

275. Police Cadet Trainees receive some training on human rights during their basic six-month Cadet Training Program. Serving Police Officers may receive similar training during upgrading courses throughout their career.

Article 3: Equal rights of men and women

276. In New Brunswick, in 2003, all elected female government members (5) were appointed to Cabinet in the following portfolios: Office of Human Resources; Departments of Training and Employment Development (also responsible for Status of Women); Education; The Environment and Local Government; Tourism and Parks. Women now comprise 28% of the provincial Cabinet.

277. Today, 31% of lawyers in New Brunswick are women. This is changing, however, as increasing numbers of women choose to pursue a legal education and career. The most experienced lawyers are overwhelmingly men: just 6% of lawyers with more than 25 years' experience are women, and only 18% of lawyers with 20-25 years. 37% of lawyers with 10-20 years experience are women, and 38% of lawyers with 5-10 years. However, exactly 50% of lawyers with less than 5 years experience are women.

278. These statistics are reflected in judicial nominations. All lawyers who have been practicing for 10 years are eligible to apply for appointment. At present, only 23% of applicants are women. It is significant that although lawyers are eligible to apply after 10 years of practice, very few applicants apply before completing 20 years of practice (38% of female candidates and 18.6% of male candidates have fewer than 20 years experience), and, as noted, the group of lawyers with more than 20 years experience is overwhelmingly male.

279. Despite this, 3 of the last 9 judges appointed to the Provincial Court (33%) have been female; this exceeds the proportion of eligible candidates that are female. In 2003 the province appointed it's first female Associate Chief Judge. At present, 4 of 27 judges are women (14.8%).

280. In 2002, the Government of New Brunswick established a Women's Issues Branch of the Executive Council Office. The Branch is responsible for providing advice to the Minister Responsible for the Status of Women; coordinating the government's three-year action plan on violence against women; supporting the Wage Gap Roundtable; and conducting gender based analysis on any program, policy, or legislative changes brought before government.

281. In 2002 New Brunswick convened a Wage Gap Roundtable that submitted its final report to government in December 2003. The report lays out the complexity of the wage gap issue and the need to adopt interactive solutions. The report also found no proof that pay equity legislation and practices alone can resolve the wage gap; rather, it asks the government to address the underlying causes and contributing factors. Government response to this report is forthcoming.

282. Employment Standards legislation in New Brunswick recognizes the right to equal pay for equal work. The *New Brunswick Human Rights Act* has provisions with respect to sex discrimination in the employment sector that allow for challenges raising pay equity

concerns in individual cases. However, relatively few complaints of this nature have been filed with the Human Rights Commission.

283. The Commission has received and investigated a number of complaints of sex discrimination related to pregnancy, since maternity and parental leave benefits under Federal Employment Insurance legislation were increased. The Commission is concerned with the persistence of sex-based discrimination in this area and is currently preparing a public guideline for further education and human rights promotion on this topic. Detailed information on initiatives adopted in New Brunswick to ensure equal rights between men and women are provided in Canada's Fifth Report on the *Convention on the Elimination of All Forms of Discrimination against Women* at the following Web-site: http://www.canadianheritage.gc.ca/progs/pdp-hrp/docs/cedaw5/cedaw5part2_e.pdf

284. The New Brunswick Human Rights Commission has not received any complaints of discrimination from women of Arab or Muslim descent alleging discrimination on grounds of sex and religious practices since the events of September 11th, 2001, nor has there been any increase in race-based complaints generally since these events.

Article 4: Derogation clause

285. The Minister of Public Safety may declare a state of emergency under the *Emergency Measures Act* of New Brunswick. Similarly, a Municipality may declare a state of local emergency. In declaring a state of emergency or local emergency, the Minister or the Municipality, as the case may be, may do everything necessary for the protection of property, the environment, and the health or safety of persons therein. Under the same Act, the Disaster Assistance to Municipalities Regulation governs the provision of chargeable and non-chargeable assistance to municipalities by the province. The law clearly details what can occur during a declaration and there are checks and balances for continuing and terminating a declaration.

286. Even though a declaration can impinge on a number of rights, each one of them must be described and the affected public informed. Declarations are also limited geographically and spatially as they automatically are revoked unless renewed.

Article 10: Treatment of persons deprived of liberty

287. In compliance with the federal *Youth Criminal Justice Act* Section 84, it is the policy of the Department of Public Safety, Community and Correctional Services Division, that all young persons are to be held separate and apart from any adult who is detained or held in custody. Procedures to follow are contained within the Young Persons Institutional Policy and Procedures (2002) and the Institutional Services Policy and Procedures (2001) of the Department of Public Safety, Community and Correctional Services Division.

Rehabilitation and Education Programs for People Detained

288. Rehabilitation and Education Programs depend on: time; which jail; classification; and what the detained person wants. Depending upon the institution and the length of sentence, the programs available to individual offenders will vary. Responsibility for planning programs is two-fold: it rests with the individual offender and also with the classification committee. Most institutions make available educational programs such as upgrading, high school equivalency and correspondence courses, small library and recreational programs. There are regular visitors from church groups and from other community support agencies such as Alcoholics Anonymous, John Howard Society, Elizabeth Fry Society, and Coverdale Centre.

	Saint John	Moncton	Madawaska	Dalhousie
AA (Alcoholics Anonymous)	X	X	X	X
NA (Narcotics Anonymous)	X	X	X	X
GA (Gamblers Anonymous)				
GED / Upgrading (General Educational Development)	X	X	X	X
Literacy	X		X	
Computer Skills			X	
OSAP (Offender Substance Abuse Program)				X
ADAPT (Amending Disruptive Abusive Patterns Together)	X			
Anger Management	X	X	X	
Kitchen	X	X	X	X
Carpentry	X		X	
Maintenance			X	X
Recreational	X	X	X	X
Art	X			
Church Services	X	X	X	X
Bible Study	X		X	
Community Work Program	X		X	

Specific Measures Available for Women

289. The New Brunswick Government offers Self Esteem/Living Skills/ Anger Management/ Substance Abuse Treatment to female offenders.

Article 18: Freedom of thought, conscience and religion

290. The *Education Act*, assented to February 28, 1997, provides for one publicly funded educational system, from kindergarten through to Grade 12.

291. Section 2(2) of the *Education Act* states that all schools established under this Act are to be non-sectarian.

292. Section 16(1)(c) of the Act provides that no action shall be taken with respect to the absence of children from school on a day regarded as a Holy Day by the Church or religious denomination to which the child, or parents of the child, belong.

293. In July 2001, the *Leave of Absence for Religious or Ethnic Purposes* policy was revised. The Department of Education respects differences in its employees and their beliefs, and recognizes the fundamental principle that all persons are equal in dignity and human rights. An employee may be granted a leave of absence, on request, for religious or ethnic purposes, including the observance of religious holidays. The Department of Education strives to provide a positive working and learning environment for all employees and students, free from any form of discrimination.

Article 26: Equality before the law

294. The *New Brunswick Human Rights Act* expressly prohibits discrimination on the basis of twelve enumerated grounds. These are: race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

295. In 1998, the Supreme Court of Canada indicated that human rights legislation is subject to the *Canadian Charter of Rights and Freedoms* and as the list of enumerated grounds under the *Charter* is not closed, so too should human rights codes aimed at achieving equality of opportunity be interpreted in a purposive and non-restrictive manner.

296. Over the past decade, the New Brunswick Human Rights Commission (NBHRC) has continued to be the principle enforcement mechanism available to New Brunswickers for the maintenance of the equality rights guaranteed under the *International Covenant on Civil and Political Rights* (ICCPR). More recently, and particularly since the development of a similar purposive approach to equality rights under the *Canadian Charter of Rights and Freedoms*, the Commission has sought to carry out its work of achieving equality of opportunity in New Brunswick, in a manner consistent with the full range of rights protected under the ICCPR and its companion treaty, the *International Covenant on Economic Social and Cultural Rights* (ICESCR).

297. The Commission continues to approve requests for special programs aimed at reducing barriers to employment in sectors in which various segments of the workforce are traditionally underrepresented. Its experience has shown that public sector employers are more frequent users of the special programs approval process under section 13 of the Act, than employers in the private sector. The Commission has recently abandoned its practice of insisting on approval of all such programs. A purposive interpretation of the Act, in light of subsection 15(2) of the Charter, suggests that this provision should be interpreted as being permissive rather than mandatory. This means that resources committed to

review an approval of plans can now be freed up to promote the adoption of such programs within the private sector on a voluntary basis.

298. In New Brunswick, since Canada's last report under the ICCPR, the Commission has adopted an interpretation of ancestry and national origin discrimination as grounds that may be inclusive of language. It has therefore investigated and settled or dismissed such complaints. However, there has been no judicial determination with respect to the Commission's assertion of jurisdiction in these matters at this time.

299. From 1995 to date, the Commission has also developed several formal guidelines to provide advice to employers and service providers with respect to their obligations under the Act and the Commission's own interpretation of such, and to clearly structure and facilitate the complaint process for all parties concerned. These include:
- Guidelines on Disclosure of File Information in Criminal Prosecutions;
- Guideline on Privilege and the Human Rights Commission;
- General Criteria for the Investigation of Complaints of HIV/AIDS Discrimination;
- Guideline on Time Limit Extension for Complaint Initiation;
- Guideline on Delegation Compliance Functions under the *Human Rights Act*;
- Guideline on Fashioning Remedies under the New Brunswick *Human Rights Act*;
- Guideline for BFOQs (bona fide occupational qualification) and BFQs (bona fide qualification) and the Duty to Accommodate; and
- Guideline on Drug and Alcohol Testing in the Workplace.

300. Further Guidelines currently in development or available in draft form address more substantive aspects of the Act's application and include:
- Discrimination in the Housing Sector;
- Accommodating Physical and Mental Disability at Work;
- Pregnancy related Discrimination;
- Discrimination and Language;
- Grooming and Dress Codes;
- Discrimination and Mandatory Retirement; and
- Sexual Orientation Discrimination.

Article 27: Religious, cultural and linguistic rights

301. The province of New Brunswick is an officially bilingual jurisdiction with a sizeable French language minority and English language majority. In the last two years the Province has also undertaken a major reform of the *Official Languages Act*, creating a separate Official Languages Commissioner and extending the reach of the Act to municipal governments and third parties contracted to provide government services. The legislative reforms also more forcefully guarantee the right to be heard in the official language of one's choice by a tribunal that can hear the parties without the aid of an interpreter.

Québec

Article 2: Equal rights and effective remedies

302. In 1995, the *Charter of Human Rights and Freedoms* (the Charter) (R.S.Q., c. C-12) was amended so that the Commission des droits de la personne, now called the Commission des droits de la personne et des droits de la jeunesse (CDPDJ), was also given the mission of protecting the interests of the child recognized by the *Youth Protection Act* (R.S.Q., c. P-34.1). In 2000, the CDPDJ was also given the mission of applying the *Act Respecting Equal Access to Employment in Public Bodies* (R.S.Q., c. A-2.01).

303. Between January 1, 1995, and September 30, 2003, the CDPDJ, as part of its mandate to investigate under the Charter, opened 8,127 investigation files. Of this number, 96 files were opened on its initiative. The CDPDJ also intervened in a number of cases involving children's rights, and acting in this capacity, it authorized 1,233 investigations between January 1996 and September 30, 2003, 98 of which were undertaken on its initiative.

304. With respect to litigation, between January 1, 1995, and March 31, 2003, the CDPDJ brought 384 actions, 364 of which concerned the application of the Charter and 20 of which were requests filed under the *Youth Protection Act*. During the same period, 284 judgments were rendered under the Charter, 21 of which concerned the application of the *Youth Protection Act*.

305. With regard to education and information concerning the rights protected by the Charter and children's rights, the CDPDJ has published various documents. They include *The Exploitation of the Elderly: Towards a Tightened Safety Net*, published in 2001, and *Aboriginal Peoples: Facts and Fiction*, a teaching tool published in 2002. In 2003, the CDPDJ produced a review of the first 25 years of the application of the *Charter of Human Rights and Freedoms*. The document makes 25 recommendations for changes to the *Charter of Human Rights and Freedoms*. These recommendations are designed to enhance the status and impact of the Charter and the role of the institutions associated with it.

Article 3: Equal rights of men and women

306. In 1997, Quebec began taking an integrated approach to promoting equality between men and women. These initiatives, for which the Ministère du Conseil exécutif, the Secrétariat du Conseil du trésor and the Secrétariat à la condition feminine are jointly responsible, are designed to gradually introduce within the Government of Quebec, a process for systematically reviewing how the development of legislation, policies, plans and programs distinguishes between men and women.

307. In 1995, the National Assembly adopted the *Act to Facilitate the Payment of Support* (R.S.Q., c. P-2.2). This Act sets out the procedures for collecting support, generally

awarded to women, and provides for enforcement measures. Since the Act came into force, the percentage of support that is paid in full, in a timely fashion, has increased from 45% to 79%.

308. In 2002, the National Assembly adopted the *Act to Combat Poverty and Social Exclusion* (R.S.Q., c. L-7). The purpose of this Act is to guide the Government and the whole society of Québec towards a process of planning and implementing actions to combat poverty, prevent its causes, reduce its effects on individuals and families, counter social exclusion and work towards a poverty-free Quebec. To this end, the Act creates the obligation to submit an action plan and establishes a national strategy to combat poverty and social exclusion and the Fonds québécois d'initiatives sociales dedicated to funding initiatives. This fund replaces the Fund to Combat Poverty through Reintegration into the Labour Market, which was created in 1997.

309. The *Pay Equity Act* (R.S.Q., c. E-12.001) was adopted by the National Assembly in 1996. The purpose of this Act is to redress differences in compensation due to systemic gender discrimination suffered by persons who occupy positions in predominantly female job classes.

310. In 1997, legislative measures were adopted to encourage mediation in family proceedings (*An Act to Institute, Under the Code of Civil Procedure, Pre-hearing Mediation in Family Law Cases and to Amend Other Provisions of the Code* (S.Q. 1997, c. 42)).

311. The *Act Respecting Equal Access to Employment in Public Bodies* (R.S.Q., c. A-2.01) was adopted by the National Assembly in 2000. This Act establishes a special framework to promote equal access to employment for women, Aboriginal people, persons who are members of visible minorities and persons whose mother tongue is neither French nor English and who belong to a group other than the Aboriginal peoples group or the visible minorities group.

Article 6: Right to life

312. In 2001, the Ministère de la Santé et des Services sociaux published a document entitled *Pour une approche pragmatique de prévention en toxicomanie – Orientations, Axes d'intervention et Actions* [For a Pragmatic Prevention Approach in Drug-addiction – Orientations, Axes of intervention and Actions] and implementation of the approach is continuing. The document proposes, among other things, to better equip health professionals to improve detection and treatment in different situations involving the improper use of psychotropic substances, in particular foetal alcohol syndrome and the effects of alcohol on unborn children. In the case of foetal alcohol syndrome, special measures have been introduced in the regions where there is an Aboriginal clientele. For the benefit of the Cree population of Northern Quebec, a brand new information and prevention program that targets the school population has just been established. This initiative is funded jointly with the federal government.

313. In 1998 Quebec adopted *Quebec's Strategy for Preventing Suicide: Help for Life*. Since its implementation, the suicide rate appears to have stabilized. Work is now being done to update this strategy, with emphasis on setting new objectives, the results of which will be measurable in 2008. With regard to the suicide rate among the Cree Nation, it should be noted that it is comparable to the national rate observed. In this region, suicide prevention is part of the regular prevention programs offered by the 9 clinics of the villages of the Cree Territory of James Bay. In Nunavik, suicide is a major as this area has the highest suicide rate in Canada. With special funding from Quebec's Ministère de la Santé et des Services sociaux, a network of 14 youth centres is now being established in the territory to combat social distress and suicide among Inuit youth.

314. With regard to the prevention of unwanted pregnancies, departmental guidelines on family planning were published in 1996. Family planning services are offered to the public throughout Quebec. Some services are offered in local community service centres, while others are provided in hospitals. Since 2002, as a result of a decision by Quebec's Ministère de la Santé et des Services sociaux, women in Quebec have had increased access to emergency oral contraception. This public health measure was introduced principally in order to reduce unwanted pregnancies in the 15-to-24 age group.

Article 7: Protection against torture

315. In 2000 the National Assembly adopted the *Police Act* (R.S.Q., c. P-13.1). This Act establishes, in particular, a means of making police accountable in denouncing corrupt practices, whether they are violations of the Code of Ethics, internal discipline or the *Criminal Code*.

316. The shared commitment of the Ministère de la Sécurité publique (MSP) and the police forces to strictly control police operations involving the public is expressed in the *Guide de pratiques policières* [manual of police practices]. In 1995, the MSP reviewed the training offered to employees in detention centres with respect to physical intervention techniques. The purpose of this training is to protect staff and incarcerated persons through appropriate intervention techniques.

317. As for research activities, drawing on Civil Code provisions, the Ministère de la Santé et des Services sociaux published in 1998 a *Ministerial Action Plan on Research Ethics and Scientific Integrity*. This action plan is based on the concept that following rigorous standards of integrity and ethics in research is beneficial to research activities. For example, all research projects involving people must be approved by a research ethics board before they begin.

318. In 1998, the Quebec legislature amended article 21 of the *Civil Code of Québec* with respect to medical research (S.Q. 1998, c. 32). These amendments allow the spouse or, in cases where the spouse is unable, a close relative or person with specific interest in the person, to consent, for a person of full age who suddenly becomes incapable of consent, to an experiment that, insofar as it must be undertaken promptly, does not permit, for lack of time, the designation of a legal representative. Furthermore, a minor or a person of full

age who is incapable of giving consent may not be submitted to an experiment if the experiment involves serious risk to his health or, where he understands the nature and consequences of the experiment, if he objects.

319. Between January 1995 and September 2003, the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) received 236 calls regarding disciplinary measures taken against children in custody pursuant to the *Youth Protection Act* or the *Youth Criminal Justice Act*. 134 investigation findings were made on this matter.

320. Further, in 1998, the CDPDJ issued an opinion on intensive supervision of children placed in rehabilitation centres pursuant to the *Youth Protection Act*.

Article 8: Protection against slavery and forced labour

321. On October 10, 2001, the Government of Quebec issued an order in council declaring that it is bound by *Convention no. 29* Forced Labour, 1930 of the International Labour Organization (ILO). At first, compliance and opportunity studies were prepared with all Quebec departments and agencies. In that way, Quebec demonstrated its clear desire to be bound by international instruments concerning protection from slavery and forced labour for children, women, immigrants and refugees.

Article 9: Right to liberty and security of person

322. In late 1997, an *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* (R.S.Q., c. P-38.001), a reform of the previous law on the protection of the mentally ill, was adopted. The Act, whose main principle is the protection and respect of rights, ensures among other things that the person affected and his family will receive complete information about being placed under guard.

323. The new act sets out the rules governing confinement of persons whose mental state presents a danger to themselves or to others. It also deals with temporary confinement ordered by the court for a psychiatric examination and provides, in emergencies, that a person can be placed in confinement without the authorization of the court if there is a grave and immediate danger to himself or to others.

Article 10: Treatment of persons deprived of liberty

324. In 2002, the Quebec National Assembly adopted the *Act respecting the Québec correctional system* (R.S.Q., c. S-40.1). This act, for which the date of coming into force has not yet been set, clearly reaffirms that social reintegration is the key principle behind all actions taken by participants in the correctional system. Moreover, the Act defines the roles of the participants and sets out various responsibilities of the Correctional Service towards the people under their care.

325. Since November 2002, the Ministère de la Sécurité publique (MSP) has been working on implementing procedures for appearances by telephone on weekends and holidays. These

procedures would enable people who are arrested to appear before a justice of the peace, who would rule on their release or detention while awaiting proceedings, as quickly as possible after their arrest. In this way a person who is detained following arrest would be held by order of a judge.

326. Furthermore, since 1995, the MSP has had an orientation and training program for new correctional service officers. This mandatory program makes officers aware of the rights of incarcerated persons and is given before they begin working.

Article 12: Mobility rights

327. Prior to the coming into force of the Agreement on Internal Trade (AIT) in December 1994, the Government of Quebec confirmed its intention to respect the commitments and obligations set out in Canadian trade agreements. Since then, it has ensured that its obligations will be met by adopting the necessary regulatory amendments. The *Act respecting the implementation of the AIT* (R.S.Q., c. M-35.1.1) was adopted in 1997. The AIT firstly defines broad principles of open markets, which are based on the free circulation of persons, goods, services and investments.

328. As well, with respect to the mobility of workers, the residential requirements in professional legislation was repealed, thus allowing workers from outside the province to become members of Quebec professional orders.

Article 14: Fair trial rights

329. The *Act respecting administrative justice* (R.S.Q., c. J-3) was adopted on December 16, 1996. The purpose of the Act is to affirm the specific character of administrative justice, to ensure its quality, promptness and accessibility and to safeguard the fundamental rights of citizens. The Act establishes the general rules of procedure applicable to individual decisions made in respect of a citizen. Such rules of procedure differ according to whether a decision is made in the exercise of an administrative or adjudicative function, and are, if necessary, supplemented by special rules established by law or under its authority. The Act also institutes the Administrative Tribunal of Quebec and the Conseil de la justice administrative and sets out provisions concerning the members of the Administrative Tribunal with respect to their selection and appointment, the length and renewal of their terms of office, remuneration and other working conditions and premature termination of the term of office.

330. The *Act respecting the implementation of the Act respecting administrative justice* (S.Q. 1997, c. 43), passed on June 19, 1997, introduces provisions to *the Act respecting the Régie du logement* to make applicable to the commissioners of the Régie the rules governing recruitment, selection, appointment, reappointment and revocation, as well as the ethics rules contained in the *Act respecting administrative justice*, applicable to members of the Quebec Administrative Tribunal. The Act also enacts the transitional principle that the new law will apply immediately and sets out transitional rules to govern members of bodies incorporated into the Administrative Tribunal as well as the members

of the Régie du logement and of the Commission des lésions professionnelles. It was amended in 2002 to provide greater independence for members of the Quebec Administrative Tribunal, the Commission des lésions professionnelles, the Régie du logement and the Commission des relations du travail, particularly with respect to renewal of their term of office and remuneration (S.Q. 2002, c. 22).

331. The *Act respecting municipal courts* (R.S.Q., c. C-72.01) was amended three times during the period covered by this report:

- The first time was in 1998 to create the office of chief judge of the municipal courts whose functions include formulating, in collaboration with municipal judges, general policies applicable to municipal judges and ensuring compliance with judicial ethics (L.Q.1998, c. 30). This function was created to support a greater coherence in the administration of municipal courts.

- In 2000, the *Act to reform the municipal territorial organization of the metropolitan regions of Montréal, Québec and the Outaouais* maintained the status of municipal courts and their judges although some of them were abolished when the cities they served were amalgamated (S.Q. 2000, c. 56, ss. 234 to 246).

- Lastly in 2002, the *Act to amend the Act respecting municipal courts, the Courts of justice act and other legislative provisions* (S.Q. 2002, c. 21) subjected all municipal courts in Quebec to the *Act respecting municipal courts* and reviewed the structure of administrative functions within the courts. It sets out the purpose of the Act respecting municipal courts, which is to dispense community justice throughout Quebec, thus making the justice system more readily accessible to citizens.

332. In 2002, to facilitate access to the courts and reduce backlog in the judicial system, the National Assembly adopted the *Act to reform the Code of Civil Procedure*, (S.Q. 2002, c. 7). It provides the following:

- a single, simplified procedure with a 180-day peremptory time limit for the inscription of a case for proof and hearing;
- introduction of case management in more complex cases;
- settlement conferences in civil and commercial cases at trial and appeal levels;
- introduction of mediation in small claims court;
- the assistance of the clerk in the execution of small claims;
- simplification of procedures for class actions;
- increase in the court's role in case management; and
- the parties may establish the proceeding timetable.

333. The Quebec Court of Appeal found in *Quebec (Minister of Justice)* v. *Canada (Minister of Justice)*, [2003] R.J.Q. 1118 (C.A.), that some provisions of the *Youth Criminal Justice Act* unjustly violated the rights of youth under sections 1 and 7 of the *Canadian Charter of Rights and Freedoms*. In fact, some sections placed on youth the burden of justifying the maintenance of a ban on the publication of their identity following a crime instead of

imposing the burden on the prosecution of justifying lifting the ban. The Court of Appeal affirmed that the principal of confidentiality was and remains the cornerstone of the youth criminal justice system because it maximizes the chances of rehabilitation for young persons found guilty of crimes.

334. Furthermore, the Court of Appeal found that the presumption of an adult sentence being given to youth 14 years and over for certain designated offences was contrary to section 7 and could not be justified under section 1 of the Canadian Charter. This presumption imposed on young people the burden of proving that they should have a specific sentence instead of an adult sentence rather than imposing on the prosecution the burden of justifying the application of an adult sentence because of exceptional circumstances. Thus, the Court confirmed the principle that a young person should only be given an adult sentence under exceptional circumstances and that the prosecution has the burden of convincing the court that such a sentence is warranted.

Article 17: Right to privacy

335. In May 1999, the Government of Quebec adopted an action plan on the protection of personal information. Its objective is to strengthen the protection of personal information in all departments and agencies. This action plan lead to the adoption of various instruments to reinforce the protection of personal information, such as the *Cadre de gestion relatif à la réalisation d'études ou de recherches nécessitant la collecte, l'utilisation, la communication et la conservation de renseignements personnels par sondage ou par le recours à des méthodes qualitatives* [management framework for studies or research requiring the collection, use, disclosure and conservation of personal information through surveys or qualitative methods].

336. In 2001, the *Act to amend various legislative provisions as regards the disclosure of confidential information to protect individuals* (S.Q. 2001, c. 78) was adopted. The Act gives precedence to the protection of life over the protection of personal information in cases where there is an immediate danger of death, including suicide, or serious bodily injury.

337. Moreover, section 45 of the *Act to establish a legal framework for information technology* (R.S.Q., c. C-1.1), in effect since November 1, 2001, provides that the creation of a database of biometric characteristics and measurements must be disclosed beforehand to the Commission d'accès à l'information, whether or not it is in service. The Commission may make orders determining how such databases are to be set up, used, consulted, released and retained, and how measurements or characteristics recorded for personal identification purposes are to be archived or destroyed. The Commission may also suspend or prohibit the bringing into service or order the destruction of such a database, if the database is not in compliance with the orders of the Commission or otherwise constitutes an invasion of privacy. A department or agency that wishes to use biometric measurements must be able to prove that the collection of personal information is necessary for carrying out its mission, in accordance with section 64 of the *Act*

respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., c. A-2.1).

338. During the period covered, the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) issued many opinions regarding privacy on the following subjects: access to information and the protection of personal information, pre-employment medical examinations, psychological and psychometric tests, drug tests, disclosure of the identity of sexual offenders, residential obligations as a condition of employment and video surveillance in various contexts. Some of the positions put forward by the CDPDJ were reiterated in case law.

Article 18: Freedom of thought, conscience and religion

339. The Quebec *Charter of Human Rights and Freedoms* protects the religious beliefs and practices of individuals. When certain practices of institutions or businesses regarding working hours, dress codes, or food services infringes on religious beliefs or practices, the Charter requires the institution or business to agree to an arrangement with the affected people unless doing so would cause an excessive burden on the institution or business. This concept is known as "reasonable accommodation." The case law established over the years has set the guidelines.

340. In addition to the complaint process and training and mediation services offered by the Commission des droits de la personne et des droits de la jeunesse (CDPDJ), other measures exist to promote awareness of rights and fight against racism and discrimination:

- Information activities on the Charter and activities to fight racism and discrimination prohibited by the Charter through the Support for Civic Participation Program, a funding program for non-profit organizations;
- Distribution of messages encouraging tolerance, solidarity and respect for diversity, strengthening of ties with a number of ethnocultural and religious communities, and implementation of a government surveillance network in the wake of the September 11, 2001 events;
- Distribution of a guide on negotiations in intercultural situations that provides reference points for managing cultural and religious diversity;
- Organization of a symposium "Religious Diversity: Inclusion or Exclusion" by the Ministère des Relations avec les citoyens et de l'Immigration (MRCI) in collaboration with the Conseil des relations interculturelles (CRI) for the Action Week against Racism 2003, which united over one hundred representatives of religious groups, interveners and experts;
- Preparations by the MRCI for the implementation of an expertise centre on diversity management.

341. In 1995, the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) published the document *Le pluralisme religieux au Québec : un défi d'éthique sociale* [Religious Pluralism in Quebec: a challenge of social ethics].

342. In 1999, the CDPDJ received complaints concerning public prayer recital at the opening of municipal council meetings and adopted a certified opinion on the presence of religious symbols and rituals in public institutions. Aside from the provisions in the *Charter of Human Rights and Freedoms*, this opinion is based on comparative law, constitutional law, and on the provisions of the Covenant that guarantees the fundamental freedoms of conscience and religion. The Commission found nothing preventing the public expression of faith or religious affiliation—something perfectly legitimate in a pluralist society, unless, however, individuals are forced to behave a certain way. Any pressure that forces people, against their will, to participate in religious rituals such as prayer, or to reveal their beliefs or non-beliefs, is a problem in terms of fundamental freedoms. The Commission noted that the approval of religious symbols and rituals by public institutions is also a problem of political ethics. According to the Commission, public institutions that have abolished these symbols and rituals, or replaced them with more neutral formulas such as a moment of silence or contemplation, are models of what should be done.

343. In 2000, the National Assembly of Quebec adopted the *Act to amend various legislative provisions respecting education as regards confessional matters* (R.S.Q., 2000, c. 24). This Act maintains the right for elementary students and students in the first cycle of the secondary level to choose between religious instruction and moral instruction. Among other things, it abolishes the confessional, Catholic or Protestant, status of schools.

344. In *Ville de Blainville* v. *Beauchemin*, J.E. 2003-1657 (C.A.), the Court of Appeal of Quebec found that a door-to-door bylaw requiring Jehovah's Witnesses and any other person who wanted to communicate a religious or political message to obtain a licence for $100, valid only for two months and non-renewable for the ten subsequent months to be of no force or effect. Moreover, the bylaw did not allow them to meet citizens in the evening or on weekends. The Court found there was a serious and unjustified violation of the right to freedom of religion for Jehovah's Witnesses.

Article 19: Freedom of opinion and expression

345. In 2001, the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) adopted a certified opinion on the conformity to the principles of the *Charter of Human Rights and Freedoms* of some legislative and regulatory provisions governing commercial signage. In this opinion, the Commission restates that using a language in a commercial context is an exercise of the fundamental freedom of expression guaranteed by the Charter and by the Covenant. The CDPDJ pointed out, however, that in accordance with the case law of the Supreme Court of Canada and statements by the United Nations' Human Rights Committee, the rule of French predominance is, in the specific context of Quebec, a reasonable limit to the exercise of that freedom. The

Commission also felt that inasmuch as Quebec's language legislation aims to give French a place that satisfies the case law criteria of minimal impairment and proportionality, it cannot be considered discriminatory in itself.

Article 22: Freedom of association

346. In terms of group relations at work, the *Labour Code* (R.S.Q., c. C-27) is the main practical example of the principles in articles 21 and 22 of the Covenant. Since 1995, legislative amendments have been made to improve its application and functionality in order to guarantee workers the freedom of assembly and association. In 2001, the National Assembly of Quebec adopted the *Act to amend the Labour Code, to establish the Commission des relations du travail and to amend other legislative provisions* (S.Q. 2001, c. 26) and the *Act to amend the Labour Code, and the Act to amend the Labour Code, to establish the Commission des relations du travail and to amend other legislative provisions* (S.Q. 2001, c. 49).

347. Some of these provisions are related to the application of ILO *Convention No. 87*, Freedom of Association and the Protection of the Right to Organize, 1948. New responsibilities given to staff relations officers favour a more rapid treatment of applications for union recognition (R.S.Q., c. C-27, art. 28). Now, staff relations officers are able to certify associations of employees, despite employer opposition to the description of the certification unit, if they see that the association would still have representative character regardless of the decision the Commission des relations du travail would make on the description of the unit. The Commission des relations du travail began activities on November 25, 2002, in place of the Bureau du commissaire général du travail and the Labour Court.

Article 23: Protection of the family, right to marriage and equality between spouses

348. On June 10, 1999, the National Assembly of Quebec adopted the *Act to amend various legislative provisions concerning de facto spouses* (S.Q. 1999, c. 14). Through this Act, all acts and regulations provide the same advantages to de facto spouses of the same sex as to heterosexual spouses.

349. In June 2001, the National Assembly of Quebec adopted the *Act instituting civil unions and establishing new rules of filiation* (S.Q. 2002, c. 6), creating a new institution: civil union. This was created for couples, made up of people of the same or different sexes, who wished to publicly commit to a life together in respect of the laws and obligations that entail. From then on, with civil union, Quebec legislation recognized three types of conjugality: spouses joined in marriage, de facto spouses, and spouses joined civilly. Moreover, the *Act instituting civil unions and establishing new rules of filiation* established a filiation tie on spouses joined civilly and their children that grants them the same rights and obligations as those with blood ties.

350. In Quebec, the debate surrounding same-sex marriage was an issue for the courts. On September 2, 2002, the Superior Court declared legislative dispositions that prevented same-sex marriages invalid. The effect of the Superior Court's declarations of invalidity was suspended for two years. The Attorney General of Quebec did not appeal from this judgment. The Attorney General of Canada, who appealed, withdrew the appeal and agreed that the suspension on the declarations of invalidity be lifted. The Catholic Civil Rights League appealed, and did not withdraw. However, the Court of Appeal recently reviewed the legal interest of the Catholic Civil Rights League to continue its appeal. The Court found that the appeal had become theoretical and it was no longer relevant to hear it. Since the March 19, 2004, judgment of the Court of Appeal, same-sex spouses can be married in Quebec (*Catholic Civil Rights League* v. *Hendricks and Leboeuf et al.*).

Article 24: Rights of the child

351. *The Multisectoral Agreement on Child Victims of Sexual Abuse, Physical Abuse or Neglect That Threatens Their Physical Health* published on March 1, 2001, is one of Quebec's achievements. The socio-legal intervention procedure set out in the agreement aims at guaranteeing better protection for children and providing them with the necessary help while encouraging close collaboration between the Director of Youth Protection, the Attorney General's Prosecutor, the police, and the other stakeholders involved such as schools or early childhood centres, as required. The Ministère de la Justice has decided to have all cases of assault involving child victims handled by prosecutors specializing in that field. A new *Prosecutor's guide: sexual offences and abuse cases* is being developed and will be given to all prosecutors involved in these cases in 2004.

352. In keeping with the principles and objectives of the *Convention on the Rights of the Child*, Quebec's family policy, adopted in 1997, recognized that parents have the essential role in their children's development and the government has a supporting role. To update these principles, Quebec's family policy has the objective of equalizing children's chances, in addition to encouraging children's development. The government's will to encourage the full development of children is reflected by the implementation of a number of measures. These include, of note, early childhood education centres throughout Quebec. More details can be found in *Canada's Second Report on the Convention on the Rights of the Child.*

Article 27: Religious, cultural and linguistic rights

353. Relying on the fifteen principles adopted by the National Assembly in 1983 to guide Quebec's relations with Aboriginal people, and on the motions of 1985 and 1989 recognizing the eleven Aboriginal nations in Quebec, in 1997 the Government of Quebec adopted guidelines entitled *Partnership, Development, Achievement* for dealing with the Aboriginal nations.

354. Since the introduction of its new guidelines, the Government of Quebec has signed a number of agreements with Aboriginal communities or nations, as the Internet site of Quebec's Secrétariat aux affaires autochtones indicates

(http://www.cex.gouv.qc.ca/w/html/w1305002.html). These agreements have taken various forms: framework agreements, statements of understanding and mutual respect, special agreements or sector-based agreements. The Government of Quebec is also pursuing negotiations with the Aboriginal nations with a view to concluding comprehensive territorial agreements.

355. Mention should be made in particular of the following two agreements that the Government of Quebec concluded during the period in question:

- The first, the *Agreement Concerning a New Relationship Between the Government of Quebec and the Crees of Quebec*, dubbed the Peace of the Braves by the Grand Chief of the Grand Council of the Crees, was signed in 2002. It concerns in particular cooperation between the Crees and Quebec in developing energy, forest and mining resources.

- The second, the *Partnership Agreement on Economic and Community Development in Nunavik*, was concluded in 2002 with the Inuit. It deals primarily with economic (hydroelectric power, mining and tourism) and community development.

Appendix 1

- Birth rate in Quebec[69]
  - In 1996: 11.7%
  - In 1998: 10.3%
  - In 2000 projected: 9.7%
  - In 2002 projected: 9.7%
- Maternal mortality[70]
  - Average annual rate (5 years) in 1996: 2.6/100 000 people.
- Infant death rate by sex (per 1000)[71]

Year	Male	Female	Combined
1996	5.0	4.2	4.6
2000 projected	5.6	3.6	4.6
2002 projected	4.9	4.3	4.6

- Death rate according to age and sex[72]

[69] Institut de la statistique du Québec – April 7, 2003.
[70] Éco-Santé Québec 2002.
[71] Institut de la statistique du Québec – August 27, 2003.
[72] Action Plan 2003 – 2008, Quebec's Strategy for Preventing Suicide, working paper.

- In men, all age groups between 20 and 49 have rates above 40 per 100,000 for the 1997-1999 period. This is at least double the average rate in Quebec. Except for the 0-14 group, boys and men have rates three to six times higher than women. Suicide is the leading cause of death in the under 45 group and leads to twice as many deaths than traffic accidents.

Ontario

Article 2: Equal rights and effective remedies

Ontario Human Rights Commission

356. Of the 1,941 complaints closed during the fiscal year 2000-2001, 1,219 complaints were mediated, settled, resolved by parties or withdrawn and the Commission made decisions on 722 of these complaints. The growing use of mediation by people on each side of a complaint, is the principal reason the Commission has significantly reduced its caseload. Specially-trained mediators offer parties the option of voluntary mediation early in the process. The mediation process is generally concluded within three to six months of filing a complaint. This year, 51 % of the Commission cases were resolved as a result of mediation services, as well as more traditional settlement techniques such as conciliation.

357. During the 2000 – 2001 fiscal year, the Commission made significant strides in a number of areas including caseload management and timelines in handling complaints. The Commission resolved more cases than it opened. In 2000 – 2001, it opened 1,775 and resolved 1,941 cases. As at March 31, 2001, the Commission's active caseload was 1,781. A comparison with earlier figures of 2,745 on March 31, 1998, 2,386 on March 31, 1999 and 1,952 on March 31, 2000, demonstrates the consistent progress the Commission continues to make in this area.

358. In the fiscal year 2001 – 2002, 2,438 new complaints were filed at the Commission representing a general rise in complaints across most grounds of discrimination. This amounts to an increase of 663 cases (37%) over the total 1,775 complaints filed in the previous fiscal year 2000 – 2001. The ground of disability and sexual orientation accounted for the largest proportion of the increase in complaints received by the Commission.

359. In the fiscal year 2002 – 2003, 1,776 new complaints were filed at the Commission. The Commission closed 1,954 cases, close to the same number as the previous year (1,932). Its active caseload as at March 31 2003 was 2,137. The Commission continued to maintain a caseload that is current, which means the average age of the cases is less than 12 months. For the 2002 – 2003 fiscal year, the average age of the caseload was 11.5 months, up slightly from 11 months in the previous year.

Family Initiatives

360. In 1999, Ontario expanded the unified Family Court so that it now covers approximately 38 per cent of the population. The Family Court provides a single point of entry for family clients into the justice system because it has jurisdiction to hear all family matters. All Family Courts provide voluntary family mediation services and parent information

sessions to the public and have Family Law Information Centres. The Centres provide clients with information and general advice to assist them in the early and non-adversarial resolution of family disputes. In 2003, Ontario began work on a proposal for expansion of the Family Court across the province for submission to the federal government. Plans were also made for the expansion of Family Law Information Centres to remaining court locations.

361. Also in 1999, the Family Law Rules came into effect in two of the three trial courts that hear family cases, including the unified Family Court. They emphasize the early non-adversarial resolution of cases and include plain language rules and forms to assist access to the family court system. In 2003, Ontario's Family Rules Committee began work to expand the application of the Family Law Rules to the remaining trial court in the summer of 2004.

362. In 2002, Ontario established a Child Protection Backlog Steering Committee to address best practices in child protection cases and to respond to concerns about delays in processing these cases through the family court system. The Committee is expected to provide its final report to Ontario's 2004 Justice Summit.

Victims' Bill of Rights

363. In 1996, the Victims' Bill of Rights came into force. This legislation sets out the principles that apply to the treatment of victims of crime. It also amended some provisions of the *Ontario Evidence Act* making it easier for child and vulnerable witnesses to testify in civil court by:

- changing the rules related to the competency of child witnesses;
- eliminating the need for corroboration of a child's testimony;
- providing accommodation measures such as screens and closed-circuit TV; and
- providing options for reviews of the admissibility of hearsay evidence for child witnesses.

364. The Victims' Bill of Rights requires that victims are to be given access to information about:

- the services and remedies available to victims of crime;
- the provisions of the Act and of the *Compensation for Victims of Crime Act*;
- the protection available to victims to prevent unlawful intimidation;
- the progress of investigations that relate to the crime, the charges laid with respect to the crime and, if no charges are laid, the reasons why no charges are laid;
- the victim's role in the prosecution, court procedures that relate to the prosecution, the dates and places of all significant proceedings that relate to the prosecution;
- the outcome of all significant proceedings, including any proceedings on appeal, any pretrial arrangements that are made that relate to a plea that may be entered by the accused at trial, the interim release; and

- in the event of conviction, the sentencing of an accused, any disposition made under section 672.54 or 672.58 of the *Criminal Code* (Canada) in respect of an accused who is found unfit to stand trial or who is found not criminally responsible on account of mental disorder, and victims' right under the *Criminal Code* (Canada) to make representations to the court by way of a victim impact statement.

365. The Victims' Bill of Rights was amended in 2001, creating the Office for Victims of Crime, a permanent agency that provides advice to the Attorney General on issues pertinent to the protection of victims of crime.

Environmental Bill of Rights

366. The *Environmental Bill of Rights* (EBR) allows the public more access to the Envronmental Review Tribunal to appeal the issuance or amendment of environmentally significant instruments. Section 38 allows residents in Ontario to seek leave to appeal a decision to implement an instrument for which notice was already provided for under the EBR. For example, in 2001, a citizens group made use of section 38 to challenge a water taking permit.

367. Section 84 of the EBR also permits Ontario residents to bring an action in court, in certain prescribed circumstances, against individuals or parties where an actual or imminent contravention has caused or will imminently cause significant harm to a public resource of Ontario.

Declarations of Death Act

368. In the wake of September 11, 2001, Ontario passed the *Declarations of Death Act*, 2002. The legislation allows relatives of people who have disappeared in disasters to apply to the courts for a declaration of death.

Amendments to the Public Service Act

369. Amendments to the *Public Service Act* proclaimed in June 2001 provide better protection for vulnerable persons resident in provincially operated facilities. The amendments place a limit on the authority of vice-chairs at a Public Service Grievance Board arbitration hearing to reinstate employees dismissed from employment for physically or sexually abusing a resident of a provincial facility. The amendments do not prevent a vice-chair from reinstating an employee but do prevent a vice-chair from reinstating an employee to a position that provides him or her with an opportunity for contact with residents of a facility if the vice-chair finds that the employee did in fact physically or sexually abuse a facility resident.

370. The amendments maintain an employee's right under the *Public Service Act* to be reinstated if the vice-chair determines that dismissal from employment was not the appropriate discipline in the circumstances. At the same time, the amendments provide a

further measure of protection and security for vulnerable persons resident in provincially operated facilities.

SCC Decision in Ontario v. OPSEU

371. Ontario successfully defended an appeal made to the Supreme Court of Canada (SCC) by a bargaining agent for provincial government employees in 2003. In the case, Ontario v. Ontario Public Service Employees Union, the SCC determined that in certain circumstances it is an abuse of process for a criminally convicted person to re-litigate the issue that was at the heart of the criminal conviction in a subsequent civil proceeding. The Supreme Court's decision in this case protects participants in the criminal trial process, especially victims of the criminal activity, from being required to participate or testify in a subsequent hearing when there is no basis to doubt the merits of the criminal conviction.

Racial Profiling

372. In December 2002, on the eve of International Human Rights Day, the Ontario Human Rights Commission (OHRC) announced that it would conduct an inquiry into the effects of racial profiling on individual, families, communities and society as a whole. The OHRC defined racial profiling as any action taken for reasons of safety, security or public protection that relies on stereotypes about race, ethnicity, colour, ancestry, religion or place of origin rather than reasonable suspicion, to single out an individual for greater scrutiny or different treatment. Profiling occurs in many contexts, including law enforcement and criminal proceedings, the enforcement of zero tolerance policies in schools, and the actions of private security guards. Submissions were received by telephone, mail, and through an online questionnaire on the OHRC's website. The OHRC received approximately 400 responses related to racial profiling. The OHRC's report including recommendations, entitled *Paying the Price, the Human Cost of Racial Profiling*, was released in December 2003.

Community Mental Health and Addiction Treatment Services

373. Community Mental Health and Addiction Treatment Services have signed Transfer Payment Agreements with the Ministry of Health and Long-Term Care which contain a commitment to operate according to the manual, including:

- complying with the Human Rights Code and other legislation,
- providing clients information about their rights,
- ensuring clients are aware of their right to complain or appeal an agency's decision, and
- ensuring agencies have code of ethics posted in places accessible to clients.

374. The agencies must establish processes and procedures that demonstrate that they are providing equitable and fair access to services for the entire community.

Ontario Works Act

375. Recommendation #35 of the Hadley Inquest Jury Recommendations directed that "all delivery agents of *Ontario Works Act* social assistance establish a local response for the expedited intake of applicants who are fleeing situations of domestic violence." In addressing this Jury Recommendation, the government committed to providing training for Ontario Works delivery agents on abused women's issues and related supports and services. The Ministry of Community and Social Services committed to working with its municipal partners to increase staff awareness and strengthen supports in place for those fleeing situations of domestic violence.

376. Currently, Ontario Works policies are in place to assist abused women who are applying for, or already in receipt of, financial assistance. The Ministry is developing a Learning Module for Ontario Works staff on abused women's issues. The Learning Module is intended to enhance these measures by providing delivery agents with tools and targeted training to promote best practices and enhanced service in supporting abused women and their children.

Article 6: Right to life

Ontario Rental Housing Tribunal

377. The *Tenant Protection Act, 1996*, governs landlord and tenant matters in Ontario. The Act contains a legislative clause that an adjudicator of the Ontario Rental Housing Tribunal may use discretion in ordering termination of a tenancy if there is a compassionate or other reason to retain the tenancy. Adjudicators often use this clause when the only alternative is to create a homeless situation and there may be other remedies available for the landlord, i.e., mediation, establishment of a payment plan, etc.

Supportive Housing for those with Mental Illness

378. In March 1999, the Ontario government announced a provincial homelessness strategy that included $45 million in each of the next three years for the Ministry of Health and Long-Term care to provide supportive housing for people with serious mental illness. The initiative is referred to as the Mental Health Homelessness Initiative, Phase 1 and Phase 2.

379. In October 1999, $24 million was awarded for Phase 1 for 962 units of supportive housing in Toronto, Hamilton and Ottawa. These three cities were targeted for Phase 1 as they had the highest emergency hostel expenditures in 1998.

380. Of the 962 housing units, 762 are in Toronto, 100 in Ottawa and 100 in Hamilton. 739 units are through lease agreements (apartments) and 223 units are through property purchases and renovations.

381. Phase 2 of the initiative addresses the supportive housing needs of homeless seriously mental ill persons throughout all regions of the province, including needs related to Provincial Psychiatric Hospital restructuring. Phase 2 funding of $67.6 million was announced in April 2001, for about 2600 units.

382. There are about 3,400 units in place, with 200 remaining units under development to be completed this year. At the end of the implementation phase, this initiative (phase 1 and phase 2) will create 3,600 units of supportive housing across the province.

383. A snap-shot survey of Phase 1 has been completed and demonstrates very positive results for targeting the correct homeless population and for relatively low turnover which reinforces the idea that housing with supports can stabilize very difficult to house populations. Also, an independent research project has studied Phase 1 and provides very favourable results for the initiative.

Ipperwash Incident

384. On September 6, 1995, Dudley George was shot by a member of the Ontario Provincial Police (OPP) during a protest at Ipperwash Provincial Park. He later died. A number of criminal proceedings resulted, including one conviction against an OPP officer and one conviction against an occupier.

385. A civil action was brought against the Crown and others. The action was settled on October 1, 2003.

386. On November 12, 2003, the Ontario Attorney General announced the appointment of Justice Sidney Linden to lead an independent, public inquiry into the events surrounding the death of Dudley George.

387. In conducting the inquiry, established under section 2 of the *Public Inquiries Act*, Justice Linden has a broad mandate to:

- inquire into and report on events surrounding the death of Dudley George; and
- make recommendations directed to the avoidance of violence in similar circumstances.

388. The government has indicated that it would study the report with a view of taking further steps to curb incidents of racial profiling.

Suicide in Aboriginal communities

389. In Ontario, the issue of the high rate of suicide among aboriginal youth is being addressed through the Intergovernmental Committee on Youth Suicide, which is comprised of the federal and provincial governments working with First Nation leaders. The committee was established in the spring of 2000, to promote positive change in northern First Nations communities so that they become safer and healthier places for children, youth

and families to live. Strategies include supporting community capacity building, improving system responsiveness, better service coordination, promoting innovation, evaluating effectiveness and sharing lessons learned.

390. There were 204 suicides in Nishnawbe-Aski communities between 1986 and August 2000, with most of the individuals under 25 years of age. The annual number of suicides has diminished over each of the past three years by almost half.

Article 7: Protection against torture

Patient Restraints Minimization Act

391. On June 27, 2001 the government passed the *Patient Restraints Minimization Act*. The Act received Royal Assent on June 29, 2001.

392. The intent of the Act is to minimize the use of restraints and to encourage hospitals and other health care facilities to use alternative methods to prevent serious bodily harm by a patient to himself or herself or others. Under the Act, a hospital or prescribed facility may not physically, mechanically or chemically restrain a patient, or confine a patient, or use a monitoring device on a patient unless it is necessary to prevent serious bodily harm to him or her or to another person. The use of the restraint must meet other criteria prescribed by regulation, and be ordered by a physician or a person specified by regulation. The Act requires hospitals and other prescribed facilities to establish and follow policies, as prescribed in regulation, regarding restraints.

393. On April 1, 2003, regulations governing the use of physical restraints came into effect for children's residences licensed under the *Child and Family Services Act* (CFSA) and residences funded under the *Developmental Services Act* (DSA) that provide group living supports to adults with developmental disabilities.

Long-Term Care System

394. In 2004, the government embarked on a comprehensive plan to reform the province's long-term care system. In December 2003, the Minister of Health and Long-Term Care appointed his Parliamentary Assistant to undertake a top-to-bottom review of the long-term care sector and to recommend practical actions to strengthen long-term care services.

395. The Ministry of Health and Long-Term Care took immediate actions to raise care standards and protection for long-term care residents. As of January 1, 2004, all annual inspections of long-term care facilities are unannounced so that the ministry can identify and act on incidents of sub-standard care, neglect or abuse more effectively. Complaint investigations are already unannounced.

396. The ministry also created a toll-free number so that long-term care residents and their families have one easy access point to seek information or lodge complaints about a long-term care facility.

397. Ministry officials are taking a number of additional medium and long-term steps to continually improve the safety and quality of long-term care services. These efforts focus on four main areas:

- better protection for residents, improved ministry inspection and enforcement,
- improved accountability and performance management,
- better public reporting and greater transparency, and
- long-term strategies to improve the facility system's capacity to deliver high quality care.

Changes to Developmental Services Act

398. In November 2001, as part of the Ministry of Community and Social Services' Developmental Services Multi-Year Plan, the *Homes for Retarded Persons Repeal Act, 2001* was proclaimed, and the *Developmental Services Act* and its regulations were updated to remove outdated and insensitive language and to maintain important health and safety provisions formerly contained in the *Homes for Retarded Persons Act*. Amendments were also made to more than 30 statutes to reflect the repeal and resulting changes in language.

Substitute Decisions Act

399. The *Substitute Decisions Act, 1992*, protects mentally incapable people against degrading treatment by prohibiting the use of electric shock as aversive therapy. It also does not allow a substitute decision maker to consent to sterilization that is not medically required.

Article 9: Right to liberty and security of person

400. Section 84.1 of the *Highway Traffic Act* is an example of how the Ministry of Transportation (MTO) ensures that its law does not violate the right to life, liberty and security of the person protected by section 7 of the *Canadian Charter of Rights and Freedoms*. Section 84.1, which was added to the *Highway Traffic Act* by the *Comprehensive Road Safety Act*, came into force on July 3, 1997. Section 84.1(1) states that the operator of a commercial motor vehicle with its wheels becoming detached while on the highway is guilty of an offence. According to section 84.1(2), due diligence is not a defence to this charge, thereby making it an "absolute liability" offence. To ensure that the absolute liability offence provision does not violate the liberty of an offender, only fines are awarded upon conviction. Section 84.1(4) prohibits an offender being imprisoned or subject to a probation order.

401. A constitutional challenge to the validity of making the offence in section 84.1 "absolute liability", on the basis that it attracts potentially high penalties, social stigma and denies

the right to a fair trial, was launched by a number of transport carriers. On November 14, 2003, the Ontario Court of Appeal ruled that section 84.1 does not violate the Charter.

Article 10: Treatment of persons deprived of liberty

Institutionalized Adult Offenders

402. The Ministry of Community Safety and Correctional Services has embarked on a review of the offender misconduct process to ensure that penalties that remove an offender's earned remission are fair and follow appropriate procedures.

403. In 2003, Correctional Services administrators underwent extensive training in the misconduct process to ensure that decisions that impact on the liberty of detained persons are made in a fair and equitable manner.

404. Offenders have the right to apply to the courts for a review of their detention. Sentenced offenders also have the right to appeal their sentence. Offenders who are charged with internal misconduct have the right to appeal any sentence that impacts on their legislated earned remission.

405. Offenders may also contact the Office of the Ombudsman of Ontario or the Ontario Human Rights Commission to investigate their concerns. There is no current data available at this time to determine how often these recourses are exercised.

Young Persons

406. Currently, Ontario does not contract out to halfway houses. However, the Ministry of Community Safety and Correctional Services has contracts with open detention and open custody residences and secure detention and secure custody facilities. Current policy and procedures are in place to ensure the rights of youth in these facilities are not violated.

407. A "Rights and Responsibilities" booklet is made available to young persons whether they are on community supervision or in a custody setting. This booklet helps them to understand their rights and responsibilities under the Youth Criminal Justice Act, the federal legislation that came into effect on April 1, 2003, as it pertains to the youth criminal justice system.

408. Training for new Correctional Services staff includes an introduction and overview on the rights of the child as expressed in the *Convention on the Rights of the Child*.

409. Young persons have the right to apply to the courts for a review of their detention. Sentenced young persons also have the right to appeal their sentence and to ask for a review of their sentence by an independent group called the Custody Review Board.

410. Young persons may also contact the Office of the Ombudsman of Ontario, the Office of Child and Family Service Advocacy of Ontario or the Ontario Human Rights

Commission to investigate their concerns. In addition, the Office of the Ombudsman and the Child Advocate's Office are permitted to have access to the facilities where youth are held, in addition to any record related to a young person in the course of conducting an investigation. The youth under community supervision or in a custodial setting also have the right to initiate contact with these agencies. Young persons are protected under the *Canadian Charter of Rights and Freedoms*. There is no current data available at this time to determine how often these recourses are exercised.

411. The annual reports of the Ombudsman describe all complaints and enquiries received by that Office and summarize the results of investigations by the Ombudsman. Annual Reports by the Ombudsman Ontario are available online at http://www.ombudsman.on.ca/ann_reports.asp.

Adult Community Services

412. In Ontario, the courts make a determination as to who is placed under community supervision (i.e., probation or conditional sentence) and what conditions they must abide by.

413. The Ontario Parole and Earned Release Board (OPERB) has the legislative authority to determine who is eligible for parole and temporary absences from a correctional facility for over 72 hours and what conditions the offenders must abide by.

414. It is the mandate of Probation and Parole Services to ensure that the offenders placed under community supervision are assessed at intake for risk/needs and supervised in accordance with their level of risk under the Ministry's Service Delivery model.

415. If offenders feel they cannot comply with their conditions or feel they are not being treated fairly, they have the recourse to the courts for variation of their order, OPERB, or the Area Manager of the supervising probation office. They may also contact the Office of the Ombudsman of Ontario or the Ontario Human Rights Commission to investigate their concerns.

Article 14: Fair trial rights

Youth Criminal Justice

416. In 1999, Ontario Youth Criminal Justice Committees began operation in six locations. They expanded in August 2001 to 22 sites. These Committees are one form of alternative measure and are mandated to deal with minor offences committed by young persons. The Committees, which include representatives from community organizations as well as criminal justice sector partners, focus on rehabilitation and reintegration, while holding young persons accountable for their crime. They provide an effective and timely response both to the offender and community, offer direct participation in resolution to victims of crime and contribute to the efficient operation of the courts.

417. Since the proclamation of the *Youth Criminal Justice Act*, the federal legislation governing the conduct of proceedings against young offenders, Ontario has developed policy and training materials for Crown counsel. Prior to the Act coming into force in April 2003, Ontario offered a two-day intensive educational program to Crown counsel.

Ontario Rental Housing Tribunal

418. The establishment of the Ontario Rental Housing Tribunal (website: http://www.orht.gov.on.ca) through passage of the *Tenant Protection Act*, 1996 has offered greater access to justice to both landlords and tenants in Ontario and has provided them with the means to have a quick result to their judicial disputes. It has also taken approximately 75,000 applications per year out of the judicial system and had them resolved through an administrative tribunal, which is both quicker and less costly. Under the *Tenant Protection Act*, parties can appeal to Divisional Court only on a question of law. Appeal rates for Tribunal decisions are very low, averaging approximately one to two per cent of all Tribunal decisions.

Elimination of the Zero Tolerance Policy for Welfare Fraud

419. In December 2003, the government of Ontario revoked the policy regarding the permanent and temporary periods of ineligibility for social assistance for those convicted of welfare fraud. People who are convicted of welfare fraud may now receive social assistance to cover their basic needs and will no longer face life-threatening circumstances. Ontario has determined that people who commit welfare fraud should be dealt with by the criminal justice system.

Tribunal Powers

420. In *McKinnon v. The Queen*, released December 23, 2003, the Divisional Court affirmed the Ontario Human Rights Tribunal's jurisdiction to remain seized of a matter for the purpose of monitoring the implementation of its orders. It also held that once the Tribunal has found non-compliance with one of its orders, a complainant is not required to start a fresh complaint at the Commission. Rather, the Tribunal can ensure the delivery of an effective remedy by hearing evidence about implementation.

Article 18: Freedom of thought, conscience and religion

421. On April 3, 1995 the *Substitute Decisions Act, 1992* (SDA) was proclaimed in force. The SDA governs what may happen when someone is not mentally capable of making certain decisions about their own property or personal care. Generally, the law is designed to give individuals more control over what happens to their lives if they become incapable of making their own decisions and to respect people's life choices, expressed before they become mentally incapable, and take into account their wishes. The SDA ensures that mentally incapable people will be treated in a manner consistent with their beliefs, religion and culture.

Article 22: Freedom of association

422. In June 1994, the government passed the *Agricultural Labour Relations Act* (ALRA) to allow agricultural workers to unionize. Prior to the passage of the ALRA, workers in agriculture had been excluded from organizing and collective bargaining under a statutory labour relations regime. The ALRA extended the statutory right to organize to these workers, but prohibited strikes in favour of an interest arbitration regime as the dispute resolution mechanism.

423. The ALRA was repealed by the *Labour Relations and Employment Statute Law Amendment Act, 1995*, which restored the exclusion of agricultural workers from provincial labour relations legislation. The reasons given for the restoration included the unique characteristics of farming and the economic vulnerability of Ontario's agricultural sector. With the repeal of the ALRA, unions that had been certified under the ALRA were "decertified".

424. The United Food and Commercial Workers' union (UFCW) challenged the repeal of the ALRA, alleging violation of the freedom of association and of the equal protection of the law guaranteed under the *Canadian Charter of Rights and Freedoms*. The UFCW pursued this Charter challenge to the Supreme Court of Canada (SCC), where the case was heard in February 2001.

425. On December 20, 2001, in *Dunmore v. Ontario (Attorney General)*, the SCC declared that the exclusion of agricultural workers from the *Labour Relations Act, 1995* (LRA) was unconstitutional in the absence of any other statutory protection of their freedom to associate. The Court held that, at a minimum, a statutory freedom to organize must be extended to agricultural workers along with protection judged essential to its meaningful exercise. (The Court did not rule on the UFCW's arguments that the repeal of the ALRA allegedly violated the right to equal protection of the law under the Charter.)

426. The SCC suspended its decision for 18 months (until June 19, 2003) to allow Ontario to develop a legislative response.

427. In response to the Dunmore decision, the government introduced on October 7, 2002 Bill 187, the Agricultural Employees Protection Act, 2002 (AEPA), which was passed by the Legislature and received Royal Assent on November 19, 2002. The AEPA was proclaimed into force on June 17, 2003.

428. Recognizing the unique characteristics of agricultural production, the AEPA provides for the following rights of agricultural employees:

- to form or join an employees' association,
- to participate in its lawful activities,
- to assemble,
- to make representations to their employer, and

- to protect against interference, coercion or discrimination in the exercise of their rights.

Article 23: Protection of the family, right to marriage and equality between spouses

429. The *Family Responsibility and Support Arrears Enforcement Act, 1996*, expanded the tools available in Ontario to enforce support orders. The Family Responsibility Office, which enforces support provisions in court orders and domestic contracts, can report defaulting payors to the credit bureau, suspend defaulting payors' drivers' licences, garnish joint bank accounts, and even obtain court orders against third parties who shelter assets on behalf of a defaulting payor.

Article 24: Rights of the child

Early Childhood Development Initiative

430. The Ministry of Health and Long-Term Care has funded 17 projects as part of Ontario's Early Childhood Development Initiative to develop services for substance-involved pregnant and parenting women and their children under six years of age. The 17 different sites across the province are engaged in a range of activities from direct treatment services to needs assessments. The scope of Early Childhood Development Addictions Project activities include: substance abuse treatment; ancillary programming such as childcare, life skills, parenting skills, improved client access and linkages to health care, housing and social services and some public education regarding fetal alcohol syndrome/fetal alcohol effects (FAS/FAE).

Article 26: Equality before the law

431. The *Ontarians with Disabilities Act* (ODA), *2001*, was passed in December 2001. The ODA requires that the provincial government and all of Ontario's municipalities, school boards, hospitals, public transportation providers, colleges and universities prepare annual accessibility plans for the removal of physical, attitudinal and policy barriers in order to ensure greater accessibility and opportunities to all citizens of the province.

432. The Act established the Minister's Accessibility Advisory Council of Ontario to advise the Minister of Citizenship and Immigration on accessibility and effective implementation of the ODA.

433. The Act also established the Accessibility Directorate of Ontario to support and manage the implementation of the ODA and to support and review the progress of organizations with legal obligations under the ODA. The Accessibility Directorate of Ontario also works in partnership with organizations, businesses and interested individuals to develop voluntary accessibility standards and provides public education and community-based accessibility programs to raise awareness and create a greater understanding of the need for accessibility and inclusion throughout the Province.

Article 27: Religious, cultural and linguistic rights

434. French-language colleges of applied arts and technology have been established by regulations made under the *Ministry of Colleges and Universities Act* (now the *Ministry of Training, Colleges and Universities Act*). At present, there are two active French-language colleges of applied arts and technology in Ontario: Collège Boréal (established in 1993) and La Cité Collégiale (established in 1989).

435. The Ministry of Community and Social Services (MCSS) is responsible for the Violence Against Women Program that includes province-wide crisis telephone counselling to provide women with information and support 24 hours a day, 365 days of the year. To further the objectives of the *French Language Services Act*, MCSS, as of April 1, 2003, has provided funding to enhance existing Francophone crisis line services to provide province-wide coverage 24 hours a day, 365 days of the year. Two Francophone crisis lines are fully operational in both southern and northern Ontario.

Manitoba

Article 2: Equal rights and effective remedies

436. The Manitoba Human Rights Commission continued to administer and enforce *The Human Rights Code* of Manitoba (http://web2.gov.mb.ca/laws/statutes/ccsm/h175e.php) and to educate and promote understanding of the civil and legal rights of Manitobans.

437. In 2003, *The Inter-jurisdictional Support Orders Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/i060e.php) came into effect. Under this Act which replaces the former *Reciprocal Enforcement of Maintenance Orders Act*, individuals can continue to seek family support orders and variations of these orders in other Canadian jurisdictions and in foreign jurisdictions by filing an application in Manitoba. The process has been simplified so individuals can proceed without incurring the cost of legal counsel. Manitoba has established reciprocal procedures with 26 foreign jurisdictions.

438. The Immigrant Integration Program provides funding to support paralegal services for refugee claimants and provides liaison with legal aid services, settlement and social supports and access to due process in refugee determination and other immigration matters to ensure rights are protected.

Article 3: Equal rights of men and women

439. The Manitoba Women's Directorate continued to represent women's interests by informing government of the impact of its programs and policies, identifying and communicating emerging issues and working to ensure the inclusion of women's priorities in Manitoba public policy. For further information, see http://www.gov.mb.ca/wd/.

440. On September 27, 2002, the "See Jane Run……Women in Politics – Make a Difference" Conference, organized by Manitoba women from various political backgrounds, was held to encourage women to participate in electoral politics.

441. Planning to replace the existing Portage Correctional Centre for women continues. A contemporary facility will provide programs specifically designed for the needs of women, with recreation and living environment at least equal to the predominantly male-oriented facilities.

442. As an example of employment equity, in the Corrections Division of Manitoba Justice employment equity objectives have provided an opportunity for women to be successfully employed at all levels of the Corrections Division. The increasing number of women from entry level to senior management positions has positively changed the face of corrections.

443. The following are some examples of measures taken during the reporting period to ensure equal rights of men and women in employment:

- beginning in 1997, grant funding was provided to child care facilities to establish flexible child care arrangements to assist parents who work non-traditional hours;
- in 2000, fee subsidies to families looking for work were enhanced;
- in 2002, as part of *Manitoba's Five-Year Plan for Child Care in Manitoba* (see below), child care fees were frozen, and a commitment was made to reduce the daily non-subsidized fee of $2.40 per child by the end of the plan.

444. In September 1999, *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/d093e.php) was implemented with a wide range of civil remedies for people subject to stalking and domestic violence. Amendments introduced in 2003 (passed but not yet proclaimed) extend remedies to situations where there has not been cohabitation and situations where there is a likelihood of violent or stalking behaviour (rather than a need for immediate protection).

445. Manitoba has a variety of initiatives which address the real and perceived barriers to ending violence in the family. These include:

- Residential Second Stage Housing programs;
- a Native Women's Transition Centre;
- counselling programs;
- an annual media campaign launched in 1998;
- education for all government employees;
- enhanced services through women's crisis shelters;
- improved outreach capacity, especially in Northern and rural Manitoba;
- expanded services through women's resource centres, including specialized services to francophone women; and
- the Men's Resource Centre in Winnipeg, one of only three in Canada, provides counselling, outreach services and a peer assistance program to help men deal with various issues that affect their lives including relationships and intimacy, abusive behaviours, childhood sexual, physical and emotional abuse, parenting and separation and divorce, etc. The Centre also offers a toll-free telephone number for men living in outlying communities or in rural Manitoba.

446. All family violence prevention and intervention services began measuring outcomes for families who use these services, rather than simply program outputs, to assess the efficacy and relevance of the services and to facilitate improved programming.

447. Additional information on measures taken to promote equal rights of men and women can be found in the Manitoba section of Canada's Fifth Report on the *Convention on the Elimination of all Forms of Discrimination Against Women* (http://www.pch.gc.ca/progs/pdp-hrp/docs/cedaw_e.cfm).

Article 6: Right to life

448. An Aboriginal Suicide Prevention Committee is being formalized to address the high rate of suicide in Aboriginal communities. Members include representatives from Manitoba Keewatinowi Okimakanak, Dakota Ojibway Tribal Council, Klinic Community Health Centre, Health Canada and the Manitoba departments of Health, Family Services and Housing, Aboriginal and Northern Affairs, and Education and Youth.

449. The "Healthy Child Manitoba FAS Strategy", put in place to address the high rate of foetal alcohol syndrome in Aboriginal communities, consists of: "Stop FAS"; support in the classroom for students with FAS; diagnostic services, treatment, outreach and support; information and education for educators and caregivers; and women's addiction services. For more information, see www.gov.mb.ca/hcm/programs/fas/index.html.

450. "Stop FAS" provides effective, supports for high-risk mothers who have used alcohol or drugs heavily during pregnancy to help prevent the birth of children affected by alcohol and drug abuse. The program began operating in Winnipeg, and, in December 2000, about $270,000 was allocated to expand the program to the Northern Manitoba communities of Thompson and The Pas.

451. After 3 years in the Program:

- 84% are no longer at risk of having a child with FAS; they have stopped using alcohol or drugs, or are using birth control;
- 65% have completed an addictions treatment program;
- 49% have stopped using alcohol, more than half for 6 months or more;
- 49% use birth control;
- 28% have completed an educational or training program;
- 63% of target children are living with their own families;
- 100% of the target children are fully immunized.

452. Through the "Canada Northwest FASD partnership", the governments of Manitoba, Alberta, Saskatchewan, British Columbia, Nunavut, Northwest Territories and Yukon, are working together to prevent foetal alcohol syndrome and to raise public awareness of the impact of FAS and related disorders. The partners share best practices, expertise and resource materials in the development of joint strategies and initiatives on FAS. For more information, see http://www.faspartnership.ca/page.cfm?pg=index.

453. Manitoba Health works directly with the Regional Health Authorities, other health care professionals, and government and community agencies, in the following areas:

- Diagnosis:
  - The Winnipeg Regional Health Authority maintains the Clinic for Drug and Alcohol Exposed Children at the Winnipeg Children's Hospital. Manitoba Health assists with the planning of training, mobile clinics and other consultative services

between Clinic staff and other regional health authorities, and communities who require FAS diagnosis.

- Burntwood Regional Health Authority maintains the Thompson FAS Support Team and Tele-Diagnostic Clinic in Northern Manitoba, which links with the Winnipeg Clinic to provide FAS diagnosis at Thompson General Hospital. Outreach services to assist families to access diagnostic services and plan for the post-diagnostic services are also provided.

- High-Risk Women:
  - Manitoba addictions treatment programs provide priority admission for pregnant women to reduce the impact of alcohol on the foetus. Women in residential treatment also receive alcohol and pregnancy information from a physician.
  - The "Study on the Needs of Pregnant Addicted Women" produced over 40 recommendations to reduce barriers for women with addictions across systems. Currently, Manitoba Health chairs an implementation committee that is working closely with key stakeholders to make positive changes for addicted women in accessing and using treatment and support services.

- Education and Awareness:
  - Child Health provides presentations, training, and community consultation to health, education, social service and justice professionals and community members on FAS. Emphasis is on prevention and intervention initiatives are highlighted and providing professionals with concrete strategies for working with FAS children and adults.
  - FAS/E information is provided in the curricula for both physicians and nurses.
  - Health Canada, in collaboration with Manitoba Health and other provincial and territorial governments, has launched a new FAS poster and pamphlet called "Pregnant? No Alcohol." The successful collaboration has sparked preliminary discussions on future national collaborations in the area of FAS.
  - Funding is provided to the Addictions Foundation of Manitoba to provide training to community and professional groups including community health nurses; care givers; "Stop FAS" mentors; and parents.
  - Support is provided to the FAS Resource Centre at the Alcoholism Foundation of Manitoba. The Resource Centre provides library materials and resource support across the province on FAS and has one of the largest collections of FAS resources in Canada.

Article 7: Protection against torture

454. A new *Correctional Services Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/c230e.php) came into effect October 1, 1999. The Act states "discipline and restrictions imposed on offenders otherwise than by a court shall be applied by a fair process and with lawful authority". The initial approach to listed disciplinary offences is to consider alternative resolution measures and, failing that, there is a hearing by a discipline committee at which the offender may be represented. If found responsible, the offender is subject to a

range of sanctions from a warning to loss of some sentence remission time, segregation or temporary loss of some privileges. All sanctions can be appealed under the Act.

455. On May 1, 2001, *The Protection for Persons in Care Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/p144e.php) came into effect. The Act imposes a duty on health facilities to protect patients from abuse and to maintain a reasonable level of safety for them. Persons who have been found to be 'not criminally responsible' for the commission of an offence due to mental disorder, and who are subsequently detained in a hospital, are also covered by this Act. The Act imposes a duty to report, and to receive reports of, abuse. Abuse means "mistreatment, whether physical, sexual, mental, emotional, financial, or a combination of any of them, that is reasonably likely to cause death or that causes or is reasonably likely to cause serious physical or psychological harm to a person, or significant loss to that person's property". The Act provides a mechanism for complaint, requires the investigation of complaints and requires compliance with subsequent ministerial orders. The Protection for Persons in Care Office provides ongoing education and training to help facilities and regional health authorities with respect to policies and procedures required to comply with the Act. Since May 2001, some 1500 people have received education and training.

456. Manitoba has set standards for foster parents and staffed residential services that promote positive behaviour management practices. Caregivers are not permitted to use corporal punishment or other forms of physical discipline such as spanking, hitting, slapping or shaking. As of April 29, 2003 these standards have been extended to cover those wishing to adopt a child.

457. The Immigrant Integration Program provides funding, coordination and professional development to assist immigrant-serving agencies to gain sensitivity and skills to assist victims of torture and to provide services to the public. The Program also provides consultation on service development for individuals and families affected by war and violence.

Article 8: Protection against slavery and forced labour

458. In December 2002, the Healthy Child Committee of Cabinet launched the Manitoba Strategy on child and youth sexual exploitation. A Multi-Jurisdictional Implementation Committee, with representation from across government and from external agencies was established to implement the Manitoba Strategy, and a provincial Sexually Exploited Youth Coordinator was hired on January 6, 2003.

459. The Manitoba Strategy offers a range of prevention and intervention strategies:

- the Community Outreach Project has increased the number of outreach workers from one to three full time positions. Outreach workers provide active and immediate outreach to children in care who are on the run;
- funding has been provided to establish a six bed residential "safe transition home" in Winnipeg for sexually exploited females between the ages of 13 and 17;

- Manitoba Justice has developed specialized child victim support services for sexually exploited youth who are willing to testify in the prosecution of prostitution-related charges;
- education and awareness programs are being developed for professionals, front line workers, citizen groups, parents and youth around the province. "Partnerships Toward Action", a one-day Forum on Child Sexual Exploitation held March 4, 2003 in Winnipeg, was attended by 150 stakeholders;
- learning materials on the prevention of child sexual exploitation are being developed for use in schools across Manitoba.

For further information on the Manitoba Strategy, see http://www.gov.mb.ca/fs/childfam/strategy_on_sexual_exploitation.html.

460. In the fall of 2003, Manitoba Justice appointed a specialized prosecutor to act as a Child Exploitation Case Coordinator, to coordinate the province's prosecutorial response to sexual exploitation of children, particularly where internet-based.

461. The Immigration and Multiculturalism Division of Manitoba Labour and Immigration has participated in a local working group to raise awareness of issues related to trafficking and vulnerability of immigrant workers and promotes access to information and orientation to Manitoba employment standards.

Article 9: Right to liberty and security of person

462. In October 1996, *The Vulnerable Persons Living with a Mental Disability Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/v090e.php), described in Canada's Fourth Report, came into force. The Act is designed to promote and protect the rights of adults living with a mental disability who require assistance in meeting their basic needs or making decisions, and recognizes these Manitobans as 'vulnerable persons'. The Act establishes the position of Vulnerable Persons Commissioner to administer the provisions dealing with the substitute decision-making. The Commissioner is subject to a number of checks and balances, including the right to appeal the Commissioner's decisions to court. For further information, see http://www.gov.mb.ca/fs/pwd/vpo.html.

Article 10: Treatment of persons deprived of liberty

463. The new *Correctional Services Act* resulted in a re-draft of existing policies and development of new policies which support an environment that promotes treating inmates with humanity and with respect for their inherent dignity as human beings. The "Standards of Professional Conduct", a Corrections Divisional policy jointly developed by management and employees and established in September 1999, states "We treat offenders fairly, objectively and with due concern for their health and safety." The Manitoba Ombudsman receives copies of all policies of youth and correctional facilities. The *Correctional Services Act* contains an internal complaint process for inmates; an independent complaint mechanism is available through the Manitoba Ombudsman, who has a wide jurisdiction to investigate allegations of mistreatment by inmates.

464. The use of force is controlled by the *Correctional Services Act*. Care is exercised to protect the heath and safety of all and the security of the facility. Authorized restraints are set out in the regulations under the Act. Correctional Emergency Response Units consisting of specialized and intensively trained staff members intervene at disturbances or serious threats. Only authorized staff may use OC pepper spray, other authorized equipment, restraint chairs and Electro-Muscular Disruption (Taser) technology, and use is controlled by policy. Other specialized units include Incident Response Teams and the Female Cell Extraction Team and policies provide direction to these units.

465. A large percentage of the correctional facility population are Aboriginal people who are a high suicide risk group in the community, and are at an even higher risk due to their incarceration. All facility staff are trained in suicide prevention through the ASIST standard program. All staff members are expected to assist in the prevention of suicide. Certified trainers deliver the program and are part of facility suicide teams of suicide risk managers, case managers, nurses and mental health staff that do follow up and contribute to the process of reducing risk of suicide. Standardized risk estimations are completed, standardized observation reports and records are documented and direction is provided through policies.

466. In November 1999, the Manitoba government appointed the Aboriginal Justice Implementation Commission. The Commission was charged with reviewing those recommendations made in the 1991 *Report of the Aboriginal Justice Inquiry of Manitoba* for which the Province of Manitoba is responsible and accountable, and with proposing methods of implementing those recommendations. The Commission's final report, submitted June 29, 2001, prioritized issues of family and child welfare and the Aboriginal Justice Inquiry – Child Welfare Initiative (discussed below) was implemented to address the Commission's recommendations in this area. For additional information on the Commission's recommendations, see http://www.ajic.mb.ca/.

467. The devolution of delivery of Probation Services by First Nations has been a long-term objective of the Manitoba government that has involved ongoing planning, training and program requirement development. It is expected that restorative justice programs, providing increased options for mediation, community forums and healing programs that are particularly relevant in the aboriginal context, will be available in areas where offenders are predominantly First Nations people.

Article 14: Fair trial rights

468. *The Provincial Court Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/c275e.php) was amended in 2001 to establish a Judicial Compensation Committee to make recommendations to the Manitoba Legislative Assembly respecting the salaries of provincially appointed judges, thereby assuring them a greater degree of independence.

Article 17: Right to privacy

469. On December 11, 1997, *The Personal Health Information Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/p033-5e.php) came into effect. Under the Act, Manitoba "public bodies" (Manitoba provincial government departments and agencies, municipalities, etc.) and the Manitoba public and private health care sector (regional health authorities, health care professionals, hospitals, personal care homes, etc.) are trustees of personal health information. The Act provides an individual with a right of access (subject to limited and specific exceptions) to his or her personal health information maintained by a trustee. The Act also controls the collection, use, disclosure, retention and destruction of personal health information by trustees and requires trustees to protect personal health information and the privacy of the individuals it is about.

470. On May 4, 1998, *The Freedom of Information and Protection of Privacy Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/f175e.php) came into effect. In addition to providing a general right of access to records maintained by Manitoba government departments, agencies and other "public bodies", the Act provides an individual with a right of access (subject to limited and specific exceptions) to his or her personal information maintained by Manitoba government departments, agencies and other public bodies. The Act also controls the collection, use, disclosure, retention and destruction of personal information by public bodies and requires public bodies to protect personal information and the privacy of the individuals it is about. This Act does not apply to the private sector.

471. Both Acts reflect the fair information principles in the Organization for Economic Cooperation and Development's *Guidelines on the Protection of Privacy and Transborder Flow of Personal Data.*

Article 23: Protection of the family, right to marriage and equality between spouses

472. In November 2002, the Family Division of the Manitoba Court of Queen's Bench introduced universal case conferencing (excluding child protection cases), requiring a semi-formal conference with parties and counsel before a Judge to seek amicable resolution of family litigation where possible. This ensures that matters proceed promptly and that the parties have the benefit of judicial advice about the merits of their case before incurring extensive legal costs.

473. In 2001, the Comprehensive Co-mediation Program (introduced in 1998 as a pilot project) recommenced operation. A lawyer/mediator from Manitoba Justice works with a family relations counsellor from Family Conciliation to provide comprehensive mediation on all issues arising on separation or divorce.

474. The Maintenance Enforcement Program established under *The Family Maintenance Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/f020e.php) was enhanced by legislative amendments in 2001 and 2003. First stage amendments included provisions to pierce the

corporate veil, preserve assets, attach lottery winnings, and register support orders in the Personal Property Registry. The second stage amendments in *The Improved Enforcement of Support Payments (Various Acts Amended) Act* (http://web2.gov.mb.ca/laws/statutes/2004/c01404e.php) come into effect on proclamation and will strengthen enforcement tools for collection of support payments.

Article 24: Rights of the child

Aboriginal Justice Inquiry - Child Welfare Initiative (AJI-CWI)

475. The Aboriginal Justice Inquiry – Child Welfare Initiative was established in 2000 to restructure the Manitoba child welfare system, in response to a recommendation made earlier that year by the Aboriginal Justice Implementation Commission (see above). The Commission had identified child welfare as a priority and recommended that the Government of Manitoba work with First Nations and Métis leaders to develop a plan that would result in First Nations and Métis communities developing and delivering child welfare services province-wide.

476. A series of agreements between the Manitoba government and First Nations and Métis representatives were negotiated, and *The Child and Family Services Authorities Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/c090e.php) came into effect November 24, 2003. The Act creates four new Child and Family Services Authorities for Manitoba: the Métis Child and Family Services Authority; the First Nations of Southern Manitoba Child and Family Services Authority; the First Nations of Northern Manitoba Child and Family Services Authority; and the General Child and Family Services Authority.

477. The new system is unique in Canada, and returns to First Nations and Métis peoples the right to develop and control the delivery of their own child and family services in a manner consistent with First Nation and Métis cultural traditions and beliefs.

478. No matter where they live in Manitoba, Aboriginal children and families will have access to child and family services from agencies providing services on behalf of an Aboriginal Authority. To ensure that children, families and communities are kept together, that decisions are made in the best interests of children and that service arrangements are culturally appropriate, stable and friendly, a standardized process has been developed which will direct children and families to their most culturally appropriate Authority. The process also provides families with an opportunity to choose a different Authority to be responsible for service provision. As of October 31, 2003, this process was completed for an estimated 7,800 families and children receiving services through the Child and Family Services system in Manitoba. The majority of these families chose to receive services from their most culturally appropriate service provider.

479. When fully implemented, the AJI-CWI will promote the following outcomes for the Métis and First Nations communities affected: self-governance; capacity building; employment opportunities; improved outcomes in terms of reduced child apprehensions and provision of improved family supports; and improved community health. More

information on the progress of the AJI-CWI is available at www.aji-cwi.mb.ca/eng/index.html.

Healthy Child Manitoba

480. Healthy Child Manitoba, established in March 2002, works across Manitoba government departments to build a community development approach for the well-being of Manitoba's children, families and communities. This effort is led by the Healthy Child Committee of Cabinet, chaired by the Minister of Family Services and Housing and comprised of the ministers of Aboriginal and Northern Affairs; Culture, Heritage and Tourism; Education and Youth; Health; Justice; and the Status of Women. The core commitments of Healthy Child Manitoba include Foetal Alcohol Syndrome prevention, adolescent pregnancy prevention and prenatal and early childhood nutrition programs.

481. During the reporting period, activities included:

- increased funding for child care centres and family child care homes;
- increased support for families with children 6 years of age and under, who now receive the full National Child Benefit Supplement;
- funding to launch the Healthy Baby prenatal program for pregnant women on lower incomes, the first program of its kind in Canada;
- more funding for the BabyFirst program, which provides a three-year home visiting service for newborns; and
- increased support to community coalitions for local programs such as parenting support, children's nutrition and literacy development.

For additional information, see http://www.gov.mb.ca/healthychild/.

Other measures

482. In April 2002, *Manitoba's Five-Year Plan for Child Care in Manitoba* was announced. The Plan advances three major elements to help strengthen children and their families – maintaining and improving quality of child-care; improving accessibility; and improving affordability of child care. For further information, see https://direct.gov.mb.ca/cdchtml/html/internet/en/five_yr_plan.html.

483. Manitoba Family Services and Housing has established a policy that allows First Nations agencies to apply for and retain the Child Tax Benefit provided by the government of Canada for children in their care. Non-aboriginal agencies are required to remit the benefit to General Revenue of the Province. This differential policy was established to partially offset an inequity in funding to First Nations agencies caring for children who are the responsibility of the Province. Manitoba has committed to addressing this inequity as resources permit and has gradually made improvements to funding. The funding model is under negotiation in the AJI-CWI implementation process.

484. In 1997, in concert with the federal government, Manitoba introduced Child Support Guidelines to provide certainty of entitlement to child support for custodial parents in the event of separation or divorce. Manitoba amended these guidelines in 2001 to clarify provisions respecting the non-custodial parent's contribution to special expenses and financial disclosure requirements. These guidelines can be found at http://canada.justice.gc.ca/en/ps/sup/grl/glp.html.

485. The following programs and services were delivered through Family Conciliation of Manitoba Family Service and Housing:

- commencing in 1995, a parent information program – "For the Sake of the Children" – was initiated to provide separating parents with information and education regarding the effects of separation and conflict on children. As of March 2003, over 10,000 parents had attended;
- commencing in 2001, a joint pilot project between federal Justice, Manitoba Justice and Manitoba Family Services and Housing was initiated to provide enhanced assessment services to the Court of Queen's Bench on custody and child access matters. The program provides brief consultation and the 'voice of the child' for older children, to help assess the wishes and concerns of the child and aid the court in decision-making. Between March 2002 and March 2003, two staff dedicated to this service area completed 143 assessments for families and the court. This service is in addition to the longstanding provision of free, court-ordered custody and access assessment reports;
- "Caught in the Middle", a support and education program for 8-12 year old children whose parents are in conflict over separation and divorce issues was initiated.

486. The Children's Advocate, established in 1993 to respond to complaints about children receiving or entitled to receive services from child welfare authorities, now reports directly to the Speaker of the Legislative Assembly, rather than to the Department of Family Services and Housing. For more information about Manitoba's Children's Advocate, see http://www.childrensadvocate.mb.ca/English/index.html.

487. In 1999, *The Child and Family Services Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/c080e.php) was amended to allow applications for access to children by extended family members to be determined on the basis of the best interests of the child, rather than requiring extraordinary circumstances.

Article 26: Equality before the law

488. *The Adoption Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/a002e.php) and *The Child and Family Services Act* were amended to make the language gender neutral and provide the opportunity for same sex couples to both legally adopt a child. De facto and extended family adoption provisions were also expanded to provide the opportunity for two persons in a non-conjugal relationship to adopt a child. These provisions enabled existing placements to be finalized, providing permanency for a number of children.

489. In 2001 and 2002, Manitoba passed a series of three acts dealing with common-law relationships, broadening them to include same-sex relationships and providing support and property rights similar to those of spouses. The acts amended included *The Family Maintenance Act* and legislation providing death benefits or pension benefits to common-law spouses, but a broad spectrum of laws in addition to those relating to families were also affected.

490. The first Act, entitled "*An Act to Comply with the Supreme Court of Canada Decision in M. v. H.*" (http://web2.gov.mb.ca/laws/statutes/2001/c03701e.php), defined "common-law" relationships gender neutrally, repealed or expanded definitions of "spouse", and made the definition of "common-law relationship" more consistent from situation to situation. While the dominant definition relates to three years of cohabitation, or one year if there is a child of the relationship, a single standard is not feasible and the definition varies from act to act. The second step in this process was *The Charter Compliance Act*, passed in 2002 . (http://web2.gov.mb.ca/laws/statutes/2002/c02402e.php), which amended a large number of acts by redefining "common-law partner". While the most common definition is a person cohabiting with another "in a conjugal relationship of some permanence", one definition could not be applied to all situations, and the definition varies from act to act. Finally, in 2002, Manitoba passed *The Common-Law Partners' Property and Related Amendments Act* (http://web2.gov.mb.ca/laws/statutes/2002/c04802e.php). Once proclaimed, this Act provides common-law spouses with property rights similar to spouses.

Article 27: Religious, Cultural and Linguistic rights

Aboriginal people

491. On March 2, 2001, the Government of Manitoba, the Government of Canada and the Sioux Valley First Nation signed the Sioux Valley First Nation Self-government Agreement-in-Principle, setting the stage for self-government for the Dakota people of Sioux Valley First Nation. It is anticipated that the comprehensive agreement may be finalized by July 2004. For further information, see www.ainc-inac.gc.ca/nr/prs/j-a2001/01110bk_e.html.

492. Funding has been provided to the Aboriginal Council of Winnipeg and the Manitoba Métis Federation in support of self-government tri-partite negotiations.

493. Treaty Land Entitlement negotiations continued between the Government of Canada, Manitoba and the Treaty Land Entitlement Committee of Manitoba, which represents 19 First Nations with validated Treaty Land Entitlement claims. On May 29, 1997, the Treaty Land Entitlement Framework Agreement was signed by the 19 "Entitlement First Nations", the Government of Canada and the Government of Manitoba. As of March 31, 2003, 748,270 acres of Manitoba Crown land have been selected and 175,415 acres have been surveyed for transfer to the Government of Canada. For further information, see http://www.gov.mb.ca/ana/tle_overview.html.

494. Implementation of comprehensive settlements under the Northern Flood Agreement continued. The Northern Flood Agreement, signed in 1977 and involving Canada, Manitoba, Manitoba Hydro and 5 Northern First Nations communities, addresses the effects of the flooding of lands for hydro development in these Northern communities. For further information, see http://www.gov.mb.ca/ana/agreement.html.

495. Tri-partite negotiations took place with the Aboriginal Council of Winnipeg respecting the Alternative Justice Program; adult education – the Aboriginal Community Campus; the Aboriginal Health and Wellness Centre; and labour market training.

496. Tri-partite negotiations took place with the Manitoba Métis Federation respecting housing; culture and education (the establishment of the Louis Riel Institute); and the Aboriginal Justice Inquiry - Child Welfare Initiative.

Multiculturalism

497. The Manitoba Multiculturalism Secretariat coordinates implementation of Manitoba's Multicultural policy and administers *The Manitoba Ethnocultural Advisory and Advocacy Council Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/e148e.php). The Secretariat is responsible for identifying priorities for action throughout government departments and agencies and ensuring the principles of multiculturalism are incorporated in their programs and services. Multicultural, cross-cultural and anti-racism initiatives are generated in government and communicated to the public and to other departments to encourage their continued evolution and development.

498. Through the Multiculturalism Secretariat and the Ethnocultural Community Support Fund, consultation, advice, board development and program planning supports are provided to ethnocultural community organizations. The Secretariat promotes and maintains the cultural values of Manitobans and encourages the development, understanding, appreciation and sharing of the diverse cultural values that enrich our province. It also coordinates communication projects to ensure cultural sensitivity, and participates on intergovernmental and community committees and with other levels of government to promote anti-racism, good citizenship and cultural awareness.

499. On July 6, 2001, *The Manitoba Ethnocultural Advisory and Advocacy Council Act* came into effect. The Act establishes a Multicultural Council that advocates on behalf of, and provides advice to the government on issues of importance to, the ethnocultural community.

Immigrants

500. The Immigrant Integration Program has two components to assist immigrants to settle in Manitoba and fully participate Manitoba life. Funding and supports are provided for adult language training to assist immigrants to develop communicative competence in English and acquire necessary, appropriate and timely settlement information to pursue

their personal, academic and employment goals and live lives of dignity and purpose in Canada. The Program also provides settlement services that facilitate the economic and social integration of immigrants in Manitoba and enhances their ability to contribute to and participate in Manitoba's labour market economy. Coordination, awareness raising and professional development activities are also conducted within government and with service providers and the general public to ensure the rights of immigrants and refugees are respected.

Saskatchewan

Article 2: Equal rights and effective remedies

501. Amendments to *The Saskatchewan Human Rights Code* were proclaimed in November 2001. The amendments replaced the ad hoc board of inquiry system with an independent human rights tribunal and streamlined the complaint process. Information respecting those amendments can be found in paragraphs 265-268 of Canada's Fifteenth and Sixteenth Reports on the *International Convention on the Elimination of All Forms of Racial Discrimination.*

502. In 2003-2004, the Saskatchewan Human Rights Commission received 3,926 inquiries and opened 242 complaint files. Allegations of discrimination were on the following grounds:

Mental or physical disability	41.1%
Sex	23.4%
Ancestry	18.4%
Age	5.2%
Religion	1.0%
Marital status	1.7%
Family status	3.8%
Sexual orientation	3.1%
Receipt of public assistance	0%
Other	2.1%

503. At all stages in the complaint process, the Human Rights Commission encourages resolution of complaints through mediation and settlement. In 2003-04, 28.3% of complaints were resolved through settlement agreements.

504. Information respecting Saskatchewan's Cree Court, Circle Courts, Courts on Reserve, the Aboriginal Courtworker Program, and Community Justice programs and initiatives, can be found in Canada's Fifteenth and Sixteenth Reports on the *International Convention on the Elimination of All Forms of Racial Discrimination.* The number of courtworkers in the Aboriginal Courtworker Program has increased to 29, and the number of Aboriginal carrier agencies that employ the courtworkers has increased to 16.

505. On November 15, 2001, the Attorney General for Saskatchewan announced the establishment of the Commission on First Nations and Métis Peoples and Justice Reform. This independent Commission engaged in problem-solving dialogue with the people of Saskatchewan, in particular with Aboriginal communities and organizations, to identify efficient, effective and financially responsible reforms to the justice system. The Commission released its final report on June 21, 2004, after having released three interim reports. Information respecting the recommendations of the Commission and the

Saskatchewan Government's response may be found in Canada's Fifth Report on the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

506. In 2001, Saskatchewan passed *The Class Actions Act*, allowing plaintiffs to launch class actions in situations where they may previously have been discouraged from pursuing individual claims due to the potentially high cost of litigation.

507. In 1997, a new *Small Claims Act* was passed, improving access to the courts for people with claims of small monetary amounts. Among other things, the Act has allowed for a wider variety of cases to be heard in Small Claims Court and has expanded the kinds of Orders the Court can make.

Article 3: Equal rights of men and women

508. On October 3, 2003, the Government of Saskatchewan released the *Action Plan for Saskatchewan Women*, a plan that envisions empowered women who have the opportunities and resources to influence and benefit from the social, cultural, political and economic life of Saskatchewan (http://www.swo.gov.sk.ca/Action_Plan.pdf). The *Action Plan* was the result of a cooperative effort of all departments, the Crown Investments Corporation, and the women's community, who adopted a strategic and integrated approach to achieve a common vision. This plan will guide the Government of Saskatchewan over the next three to five years as it works to achieve equality for Saskatchewan women.

509. The *Action Plan* has four goals, with objectives and actions under each goal:

- Economic equality and security of all Saskatchewan women;
- Safety for all Saskatchewan girls and women in their homes, schools, institutions, workplaces and communities;
- Health and well-being for all Saskatchewan women; and
- Equitable participation of women in leadership and decision-making in all sectors of society and the economy.

510. Among other things, the Plan will support the delivery of gender-based analysis (GBA) training, which is now underway, and the integration of GBA throughout government and the Crown sector.

Article 6: Right to life

511. Phase II of the National Homelessness Initiative was announced in the 2003 federal budget. Saskatchewan's allocation under Phase II is identified as $12.5 M over a three-year period. The program is delivered by Human Resources and Skills Development Canada (HRSDC). The federal priority is transitional housing with support services. Support services will be a critical aspect of both transitional and longer-term housing solutions for the homeless.

512. The province has an interest in responding to homelessness. The goal is the promotion of independence and self-reliance for people who are homeless or at significant risk of homelessness. People who are identified as at-risk are special needs and multiple needs populations including those leaving homes with family violence, persons with disabilities that prevent them from finding permanent housing, youth in transition and transient people. Saskatchewan officials are working informally with local HRSDC staff to establish a mutually agreeable process to identify, review and develop projects for the National Homelessness Initiative.

513. In Saskatchewan, the suicide rate for all people of all ages (per 100,000 population) was 12.9 for 2000, 10.9 for 2001 and 10.8 for 2002. To address the high rate of suicide among young people and Aboriginal people, over the past decade the Province has increased funding to regional health authorities to provide suicide prevention, intervention and post-intervention services. It has supported education and training for professionals and communities dealing with the issue of suicide. On a broader prevention level, the Province has implemented a number of child and youth initiatives such as KidsFirst, a program to maximize healthy early childhood development; the Youth Services Model, a program to reduce reliance on the youth criminal justice system to deal with youth misconduct; and School^{PLUS} ,a provincial initiative where schools nurture the development of the whole child, intellectually, socially, spiritually, emotionally and physically; and serve as centres for the delivery of social, health, recreation, culture, justice and other services for children and their families. The western provinces, including Saskatchewan, have also begun discussions with the federal government on the coordination of services for Aboriginal people who typically cross over between federal and provincial jurisdictions.

514. With respect to Fetal Alcohol Spectrum Disorder (FASD), the Province supports a number of prevention, awareness and intervention initiatives including the Provincial Fetal Alcohol Spectrum Disorder Prevention Program and the Saskatchewan Fetal Alcohol Support Network. In addition, KidsFirst provides support to vulnerable families and gives priority to pregnant women. The Province is working to have all health professionals understand FASD and incorporate the functioning and special needs of individuals affected by FASD into the way services are provided. Six departments are currently developing a provincial strategy for individuals with complex cognitive disabilities, including FASD, based on feedback received from a number of community discussions held across the province. Saskatchewan participates in the Canada Northwest FASD Partnership, an alliance of seven provinces and territories, that is committed to the development, promotion and co-ordination of a comprehensive approach to the prevention of FASD, as well as the intervention, care and support of individuals affected by FASD.

515. A child death review policy, which has been in place since 1992, was revised in February 2004 by Saskatchewan Department of Community Resources and Employment. The policy pertains to circumstances where a child or youth dies and the child, youth or family received services pursuant to *The Child and Family Services Act*, or the *Youth*

Criminal Justice Act (Canada), or attended a child-care centre or a family child care home licensed under *The Child Care Act*. Child death reports are published by the Saskatchewan Children's Advocate office:
http:/www.saskcao.ca/adult/linksandpublications.html.

Article 7: Protection against torture

516. For information respecting Saskatchewan measures to prevent violence, torture and other cruel, inhuman or degrading treatment or punishment, and to provide compensation to victims of personal violent crimes, see Canada's Fifth Report on the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Article 8: Protection against slavery and forced labour

517. Legislation has been implemented in Saskatchewan to hold accountable and deter those who would exploit children for sexual purposes, and strengthen protections and support services for victims. In 2002, Saskatchewan proclaimed *The Emergency Protection For Victims of Child Sexual Abuse and Exploitation Act*. The Act provides for emergency applications to be made to a Justice of the Peace for the purpose of obtaining a protective intervention order to prevent contact between a child, who is being exposed to sexual abuse and is under 18, and the offender. The Act also provides the police with enhanced search and seizure powers in relation to vehicles in the stroll area or where a police officer has reasonable grounds to believe that there is evidence in a vehicle of child sexual abuse.

Article 10: Treatment of persons deprived of liberty

518. Integrated Case Management provides for a collaborative and coordinated team approach to managing an offender's sentence, with the objective of successfully reintegrating the offender back into the community. It involves all personnel actively engaged with an offender, such as police, social workers, mental health professionals, and community agencies. In the case of young offenders, families can be involved as well. Case management planning begins at the outset of the offender's entry into the system.

519. See also Canada's Fifth Report on the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Article 17: Right to privacy

520. Saskatchewan has three pieces of legislation related to freedom of information and protection of privacy: *The Freedom of Information and Protection of Privacy Act* (FOIP), in effect since 1992, *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), in effect since 1993, and *The Health Information Protection Act* (HIPA), which came into force on September 1, 2003. The Saskatchewan Information and Privacy Commissioner is an independent officer of the Legislative

Assembly who is responsible for ensuring that public bodies respect both privacy rights and access rights under the three Acts.

521. From 1992 to 2003, the Information and Privacy Commissioner was a part-time position but, effective November 1, 2003, it became a full-time position. A stand-alone office was also established, with an Office Manager and an Assistant to the Commissioner. The number of inquiries increased from 428 in 2002-03 to 641 in 2003-04, and the number of case files increased from 75 in 2002-03 to 92 in 2003-04 (Office of the Information and Privacy Commissioner 2003-2004 Annual Report). More information on the Office of the Information and Privacy Commissioner can be obtained at http://www.oipc.sk.ca.

522. The privacy of persons living on social assistance continues to be protected by the FOIP. No change has been implemented to the procedures for identifying recipients of social assistance. Fingerprinting and retinal pattern reading would be viewed as extraordinary approaches that do not reflect provincial practice.

Article 18: Freedom of thought, conscience and religion

523. *The Education Act, 1995* allows parents to educate their children at home, rather than sending them to school, for reasons of religious or conscientious belief. The total number of students being home schooled has increased by about 100 per year since 1994.

524. In 2000, Saskatchewan replaced *The Dependent Adults Act* with *The Adult Guardianship and Co-decision-making Act*. The latter Act includes provisions for the appointment of a personal or property co-decision-maker for an adult who requires assistance in decision making but does not need full guardianship services. This respects the autonomy of adults by recognizing their rights to receive the least restrictive intervention possible.

Article 22: Freedom of association

525. *The Construction Industry Labour Relations Act, 1992*, established a province-wide system of trade-by-trade bargaining in the construction industry. The Act established trade divisions along craft lines, and provided for naming a single employer organization and trade union for each trade division. *The Construction Industry Labour Relations Amendment Act, 2000* disallowed a unionized company to operate a non-union spin-off in the same business sector. Eliminating double-breasting put all Saskatchewan construction firms on the same competitive footing as those in other jurisdictions.

Article 23: Protection of the family, right to marriage and equality between spouses

526. In 2001, the Saskatchewan Government passed *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001* and its bilingual companion Bill, *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*. These Acts amended fourteen statutes to provide for same-sex couples to be treated in the same way in law in Saskatchewan as common law couples. In those statutes, the benefits and obligations had

already been extended to unmarried opposite sex couples. The two Bills also amended eight Acts to extend benefits and obligations to unmarried couples where they were then provided only to married couples.

Article 24: Rights of the child

527. The Saskatchewan Provincial Youth Advisory Committee (PYAC) is an example of youth and government working together in meaningful ways to make substantive changes in areas of concern to youth. The main objective is to engage youth in decision making and thereby developing the capacity of the next generation of Saskatchewan leaders. Members learn about strategic planning and the formation of government policy. The PYAC has provided valuable feedback on government policies and strategies related to youth. The PYAC is funded through the Department of Culture, Youth and Recreation.

528. The Saskatchewan Youth in Care and Custody Network is a provincial organization made up of young people who are, or have been, in care or custody. Its primary objectives include supporting youth and addressing specific issues in the child welfare system. The Network provincial office and the local Network groups are funded through the Department of Community Resources and Employment.

529. Youth justice proceedings contain special guarantees to protect the rights of young people, such as protection of their identity and involvement of their families/guardians in their case planning. There is a recognition of the fact that young persons lack the maturity and knowledge of adults, and thus require safeguards to ensure their privacy and other rights are protected.

530. Canada's Second Report on the *Convention on the Rights of the Child*, referred to the establishment of the Children's Advocate Office (CAO). In 2003, the CAO received 1069 new requests for service. 18% of calls were from children or youth, and 50% were from parents requesting services on behalf of children or youth. Others requesting services included extended family members, those in professional relationships with children, foster parents, and interested third parties. In 2003, 55% of callers were assisted through Self-Advocacy Strategies, which included information on government policies, procedures and appeal processes, and ideas to assist callers in resolving issues. 27% of callers received Early-Advocacy Intervention, which involved the CAO making initial calls, conducting preliminary negotiations, and providing further self-advocacy strategies. 14% of callers received In-Depth Advocacy Intervention, which is used when issues are not resolved through self-advocacy strategies or early-advocacy intervention. In-Depth Advocacy Intervention generally includes meetings, and may involve more in-depth coaching in self-advocacy, liaison with government departments and organizations, case conferences or, on a limited basis, formal investigations.

531. The Children's Advocate Office is also involved in public education (in 2003, staff made approximately 100 presentations related to the role of the CAO and issues involving the interests of children); in systemic advocacy respecting government policies, practices or legislation (eg. issues related to youth in conflict with the law, mental health services for

children and youth, dispute resolution in the school environment, services for children with disabilities and standards of care in residential family services and First Nations Child and Family Services facilities, and safeguards for children and youth in foster and group home care); and in community advocacy on children's issues (eg. Fetal Alcohol Spectrum Disorder, Section 43 of the Criminal Code of Canada) (Saskatchewan Children's Advocate 2003-2004 Annual Report). More information on the work of the CAO can be found at www.saskcao.ca.

Articles 26: Equality before the law

532. In 2003-04, the Saskatchewan Human Rights Commission provided 61 seminars and presentations, participated in 27 community-outreach or partnership events, filled numerous requests for information, and responded to 46 media inquiries.

533. By 2003-04, the number of voluntary employment equity programs in Saskatchewan had increased to 37 employers, covering over 42,000 employees or approximately 10% of Saskatchewan workers.

534. In the sponsor workforces, the percentage of Aboriginal employees increased from 2.9% to 7.9%, and to 10.2% in the Government of Saskatchewan between 1993 and 2003. Aboriginal people make up approximately 13.5% of the Saskatchewan population. During the same period, the percentage of visible minorities in the sponsor workforces increased from 1.5% to 3.1%, and the percentage of people with disabilities increased from 2.9% to 3.6%. Visible minorities are approximately 3.0% of the provincial working age population, although these percentages are higher in the province's two largest cities: 5.5% and 5.8% in Regina and Saskatoon respectively. People with disabilities represent 11.1% of the working age population. Women make up 46.5% of the workforce, but are underrepresented in management positions. Since 1993, the number of women in management has increased from 27.6% to 33.2%, although this figure reached 35.1% in 1998 and then dropped to 33.2%.

535. In 2003-04, there were education equity programs in 17 school divisions, involving close to 80,000 students. In addition, the Regina Public School Division had an employment equity program enabling the recruitment of Aboriginal staff, which brought the total number of students benefitting from these programs to over 100,000, or approximately 57% of the students in the kindergarten to grade 12 system. In addition, there were education equity plans in ten post-secondary institutions.

536. Of self-declared Aboriginal students who entered Grade 10 between 1992 and 1998, approximately 47% completed Grade 12. In 2003-04, the Saskatchewan Human Rights Commission asked education equity sponsors to provide statistics on numbers of Aboriginal and non-Aboriginal students entering and completing grade 12, but since the information had not previously been requested only a few school divisions were able to provide the information. Of the small number that did respond, 57.6% of Aboriginal students completed Grade 12, compared to an overall graduation rate of 82.4%.(Saskatchewan Human Rights Commission 2003-2004 Annual Report)

537. Further information respecting the work of the Saskatchewan Human Rights Commission can be found at http://www.gov.sk.ca/shrc/.

538. In June 2003, the Federation of Saskatchewan Indian Nations established the First Nations University of Canada, formerly known as the Saskatchewan Indian Federated College, which was created in 1976 as a federated partner of the University of Regina. It is an independently administered university that offers quality education in an environment of First Nations' cultural affirmation. The Elders presence at the university provides wisdom and counsel for students and staff and ensures that new programs and services are founded on tradition. There are over 2,000 students attending.

539. *The Saskatchewan Indian Institute of Technologies Act* (July 1, 2000) recognizes the Saskatchewan Indian Institute of Technologies (SIIT) as the province's First Nations technical training institution with the ability to grant certificates and diplomas. This legislation ensures that First Nations people have full control over the operation of their institution and has also enhanced SIIT's credibility and stature within the country. In 2002-03, SIIT's enrolments totaled 1,013 full-time students and 220 part-time students.

540. The former Non-status Indian and Métis Program and other targeted funding programs were rolled into the Provincial Training Allowance (PTA). The PTA program is income-tested and provides financial support for people enrolled in basic education, short skills and bridging programs. In 2003-04 approximately 62% of those participating were Aboriginal.

541. The provincial government continues to provide funding and support to the Gabriel Dumont Institute of Métis Studies and Applied Research to focus on education through cultural research as a means to renew and strengthen the heritage and achievements of Saskatchewan's Métis people. Funding continues to be provided to Dumont Technical Institute (DTI) to develop and deliver culturally relevant adult basic education and skills training for Métis people. In 2002-03, DTI had 354 students enrolled in adult basic education and 220 students enrolled in skills training.

542. Partnership agreements such as the Northern Health Science Access Program and the Nursing Education Program of Saskatchewan in Prince Albert (both started in fall 2002) enable students to achieve their education and career aspirations while preserving the northern perspective of cultures, languages and traditional values. Elders are available to provide support.

543. The Post-Secondary Sector Aboriginal Education and Training Action Plan was implemented in 2002-03 to increase the participation of Aboriginal people in post-secondary education and training, and to increase the participation and employability of underrepresented groups to contribute to a representative workforce.

544. Amendments to *The Education Act*, and Regulations in 1997 allow members of the French-language minority to establish and operate their own schools, where numbers

warrant, in accordance with Section 23 of the *Canadian Charter of Rights and Freedoms*. In 1994-95 there were eight schools in the Francophone School Division with an enrolment of 1,001 students, and in 2003-04 there were 13 schools with an enrolment of 1,070 students.

545. In 2001, the Equity in Education Forum produced *Planning for Action*, an implementation guide for the 1997 policy framework *Our Children, Our Communities, and Our Future*. The Forum hosts an annual fall symposium to provide an opportunity for educators to network and advocate on issues relating to education equity.

Article 27: Religious, cultural and linguistic rights

546. The Government of Saskatchewan recognizes the inherent right to self-government of First Nations people to exercise jurisdiction on reserve land. Saskatchewan has been negotiating a self-government agreement with Canada and the Federation of Saskatchewan Indian Nations (FSIN). A separate process has also been underway between the province, Canada and the Meadow Lake Tribal Council (MLTC). An agreement-in-principle was initialed by negotiators in July 2004 in the FSIN process. In the MLTC process, an agreement-in-principle was signed by the parties in January, 2001.

547. The proclamation of *The Métis Act* and signing of the associated Memorandum of Understanding took place in January 2002. The Act focuses on three primary areas:

- it recognizes the historic, economic and cultural contributions the Métis have made to the development and property of Canada;
- it enables the Métis Nation--Saskatchewan Secretariat Inc., and its subsidiaries, to do business outside of *The Non-profit Corporation Act, 1995*; and
- it sets out a mechanism to address practical, non-rights based issues and enhanced opportunities that are important to Métis people, such as capacity building, land, harvesting and governance, through an accompanying Memorandum of Understanding.

Alberta

Article 2: Equal rights and effective remedies

548. In 1972, the Government of Alberta endorsed the Canadian Bill of Rights by creating the Alberta Bill of Rights. At the same time, the *Individual's Rights Protection Act* was enacted as the human rights law in the province. In 1996, this *Act* was repealed and new legislation was passed called the *Human Rights, Citizenship and Multiculturalism Act.*

549. The *Human Rights, Citizenship and Multiculturalism Act* recognizes everyone in Alberta has the right to be treated with dignity and equality. It prohibits discrimination in the following areas: public statements, publications, notices, signs and other representations; public services, goods, accommodation, or facilities; tenancy; job advertisements and applications; employment practices; and membership in trade unions, employers' organizations, or occupational associations.

550. It is a legislated right that every person in Alberta is protected from discrimination in the following grounds: race; marital status; religious beliefs; family status; colour; age; gender; ancestry; physical disability; place of origin; mental disability; source of income; and sexual orientation.

551. All grounds are protected in all areas, with the exception of age, which is defined as 18 years and over and is not covered in the areas of tenancy or public services, goods, accommodations or facilities.

552. The Government of Alberta has established the Alberta Human Rights and Citizenship Commission to administer and gain compliance with the *Human Rights, Citizenship and Multiculturalism Act*. The Commission is made up of a Chief Commissioner and Commissioners selected from the general public. They are appointed by the Lieutenant-Governor. The Commission reports to the Minister of Community Development.

553. The Commission receives complaints alleging discrimination at its regional offices in Calgary and Edmonton and offers a complaint resolution process. Additional information on the Commission, its programmes and its complaint resolution process can be found at http://www.albertahumanrights.ab.ca.

554. The *Ombudsman Amendment Act* was introduced in the legislature in March 2003. The proposed amendments will allow the Ombudsman to access all the information he needs to thoroughly investigate complaints about the administrative actions of provincial government departments and their associated boards and agencies. The Ombudsman investigates complaints of unfairness within the administration of the provincial government after all other avenues of appeal have been exhausted.

555. The *Class Proceedings Act* outlines the specific process for cases involving multiple plaintiffs with similar claims against the same defendant or defendants. The Act will help improve access to justice for Albertans with legitimate actions that might not pursue them because of the high cost of pursuing a case in court. The Act was proclaimed in force April 1, 2004.

556. The Calgary Domestic Violence Intake Court was established in May 2000. The judiciary, prosecution service and probation have dedicated staff to this court. The Edmonton Domestic Violence Court began on September 1, 2001. Currently, the dedicated prosecutors assigned to the Family Protection Unit are handling family violence docket and trial courts and all first appearances for family protection. In Lethbridge, protocols have been in place since 1999 to coordinate services to people affected by family violence. In March 2004, the Lethbridge Domestic Violence Docket Courtroom heard its first matters. The Domestic Violence Docket Court operates every Tuesday afternoon with a specialized domestic violence Crown prosecutor.

557. The Edmonton First Appearance Centre, a joint project of Alberta Justice and the Edmonton Police Service, was launched in 2001. The centre is designed to deal with non-criminal traffic offences outside of court. People who appear at the Edmonton courthouse may either set a trial date or speak to a prosecutor at the First Appearance Centre. The prosecutor can then provide information about the nature of the fine and the legal options available if they go to court. Where appropriate, the prosecutor works to resolve the matter with the accused before he or she goes to court. The centre is based on a similar First Appearance Centre in Calgary that opened in 1999. Similar services were also introduced in the St. Albert, Sherwood Park and Stony Plain courthouses.

558. The Criminal Justice Division has designated at least one Crown prosecutor in each of the 12 provincial Crown offices as an Aboriginal Liaison Crown Prosecutor. The role of the Aboriginal Liaison Crown Prosecutor is to develop relationships and work with local First Nations and Metis communities to identify local criminal justice needs, to participate in developing community-based Aboriginal justice initiatives and to act as a resource to other Crown prosecutors on Aboriginal justice issues.

559. Easy-to-read booklets and court forms are now available at the Court of Queen's Bench Family Law Information Centres to help Albertans who represent themselves in family court. About 20 per cent of the more than 15,000 Court of Queen's Bench family law cases each year involve a person not represented by a lawyer. The booklets and court forms use plain language to explain the often complicated procedures, giving ordinary Albertans the information they need to represent themselves. The booklets and court forms cover 27 different court applications in the area of family law ranging from child support, custody and access, to restraining orders and protection orders.

560. The *Law Society Libraries web site*, which allows users to search the catalogues of the Law Society Libraries and the Legal Reference Libraries via internet, was launched in December 2001. Users can also ask reference questions electronically and link to a

multitude of other legal resources and information, including judgments and legislation from across Canada and around the world.

561. Alberta Justice in consultation with Alberta Learning and Alberta Solicitor General, worked with teachers from across the province to develop a teaching resource for use in Grade 10 Social Studies classes. Using a variety of teaching and learning activities, the manual addresses five areas of law within the Canadian judicial system: constitutional, Aboriginal, criminal, civil and youth. The resource was distributed to 625 Social Studies teachers across the province.

562. The Legal Aid Society opened new Family Law Legal Aid offices in Edmonton in July 2001 and in Calgary in October 2001. These two offices provide family law services to Albertans who qualify for legal aid assistance in areas including divorce, child welfare and custody disputes. Mediation and other alternative dispute resolution processes are also used. The offices are a four-year pilot project that will examine the quality and cost-effectiveness of using Legal Aid staff lawyers to provide family law legal services.

563. A pilot project for all unrepresented applicants in the Family Division of the Provincial Court (except in Child Welfare matters) was launched in October 2001. Under the pilot, unrepresented parties are required to meet with intake counsellors and attend conferences before a caseflow coordinator to determine if matters can be resolved. These staff members explore options with the parties, facilitate resolutions and make referrals. Parties also receive information on mediation, judicial dispute resolution and relevant courses to assist in resolving matters without going to court. If a matter cannot be resolved, staff members ensure documents are in order, explain the court process and accompany parties through the court process.

564. The Aboriginal Courtwork Program is cost-shared through a Memorandum of Agreement between the Government of Alberta and the Government of Canada. The program provides Aboriginal people with counselling (other than legal) in relation to court procedures, their rights, and the availability of legal aid and other resources. The mandate of the Aboriginal Courtwork Program is to facilitate and enhance access to justice by assisting an Aboriginal person, who has been charged with a criminal offence and is before the Criminal Division of the Provincial Court of Alberta, to understand the system and its processes. In four Aboriginal communities, courtwork programs are provided through agreements between Alberta Justice and community corrections societies or justice commissions created by these communities. They include: Kainai Community Corrections Society, Siksika Justice Commission, Tsuu T'ina Nation/Stoney Corrections Society, Yellowhead Tribal Community Corrections Society. In other Alberta locations, Native Counselling Services of Alberta provides courtwork services for Aboriginal people facing criminal charges. All Aboriginal people (Indian, Inuit or Metis) are eligible for courtwork services, regardless of their status or place of residence.

Article 4: Derogation clause

565. The *Security Management Statutes Amendment Act* amends 17 Alberta acts to prevent or reduce the threat of terrorist activity and enhance the province's ability to respond to emergency situations. The Act upgrades precautions to protect the safety and security of all Albertans, and the province's infrastructure, industry, natural resources and environment.

Article 6: Right to life

566. All mortality data is transferred from Alberta's vital statistics board to Statistics Canada on a yearly basis. This data includes, but is not limited to, infant mortality data. The Government of Canada also receives a record of all hospitalizations in Alberta, which allows it to determine maternal mortality, among other things. Finally, the Government of Canada is provided with copies of all reports produced by the Government of Alberta, including all statistical reports. Alberta health statistics can be found at http://www.health.gov.ab.ca/resources/publications/index.html#8.

567. Alberta Health and Wellness, in collaboration with its Regional Health Authorities, develops print resources on human sexuality and methods of birth control. This information is to be used by sexual health professionals, public health nurses, and community organizations to provide information on fertility control and counseling services. This information is also available to the public.

568. Alberta Health and Wellness is involved in the Aboriginal Youth Suicide Prevention Strategy, however results are not yet available.

Article 7: Protection against torture

569. All women in Alberta have access to safe pregnancy terminations through either public hospitals or accredited private clinics. In Alberta the cost of a pregnancy termination is not a barrier to access since these procedures are publicly funded under the Alberta Health Care Insurance Plan. There is no cap on the number of procedures performed each year. The reason for pregnancy is not a factor that determines access.

570. In 1996, three major funding agencies, the Medical Research Council of Canada, the Natural Sciences and Engineering Research Council, and the Social Sciences and Humanities Research Council, issued a new common policy entitled the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*. While the rigorous policy statement and guidelines are not mandatory, Alberta, through government, universities, and research institutions, has adopted and incorporated the ethical principles and articles of the *Tri-Council Policy Statement*.

Article 9: Right to liberty and security of person

571. Federal legislation concerning anti-terrorism has created significant police powers to arrest, including arrest without a warrant in some cases. The legislation provides for review by judiciary and reporting by police to provincial ministers responsible and by ministers to the public. Alberta Justice and the Alberta Solicitor General comply by publishing annual reports on usage of these provisions.

572. The *Mental Health Act* was proclaimed in force January 1, 1990. This Act sets out processes that must be followed in order for a person suffering from a mental disorder to be admitted to and detained as an involuntary patient in a designated mental health facility. Patients must be informed of the reasons for their detention and of their rights. These rights include the right to obtain legal counsel; to apply to an independent review panel for cancellation of their admission certificates or renewal certificates; and to appeal the decision of a review panel to the Court of Queen's Bench. A Mental Health Patient Advocate is appointed to investigate complaints from, or relating to, formal patients.

Article 10: Treatment of persons deprived of liberty

573. The Alberta *Corrections Act* C-29 RSA 2000 and, specifically, Section 7 of the *Correctional Institution Regulation* OC 205-2001, requires employees to be firm and impartial when managing offenders incarcerated in correctional centres. The legislation specifically proscribes the use of humiliating tactics or harassing techniques, and states that inmates must be dealt with in a manner designed to encourage their self-respect and personal responsibility.

574. As well, Alberta Correctional Services has a considerable number of policies that reinforce the need to treat incarcerated offenders equitably. Policies include appeal mechanisms to correctional and third party officials, and reviews of staff decisions by senior correctional staff. Training initiatives are predicated on policy directives. All new and incumbent staff receive complete training on all aspects of policy, including approved security and disciplinary methods, offender management techniques, conflict resolution and protections available to offenders.

575. The Solicitor General administers the *Police Act* P-17 RSA 2000, which sets out a complaint mechanism under Part 5 for the public. A complaint respecting a police service or a police officer may be laid, which can proceed to the Law Enforcement Review Board, an independent tribunal that determines the validity of the complaint. If it is determined during the course of the complaint process that a criminal offence has occurred, the matter must be referred to the Minister of Justice and Attorney General to determine whether charges should be laid.

576. A conditional sentence is a sentence of incarceration that the judiciary has directed be served in the community. It has been utilized in Alberta since sentencing reforms in September 1996 and has been widely accepted and used by the judiciary.

Other Alternatives to Incarceration

577. The Adult Alternative Measures Program commenced operation in February 1997, to divert selected adult offenders involved in minor offences from the formal court process. The House Arrest Program is an alternative to incarceration for select, intermittent-sentenced offenders (weekend servers). Inmates who participate must adhere to the following conditions: mandatory curfews and mandatory participation in Alberta Justice programming or supervised community service work during the time they are sentenced to serve. The Community Surveillance Program is an intensive, highly structured form of supervision for inmates on temporary absence from correctional institutions. It incorporates the use of mandatory curfews and either full-time employment or participation in Alberta Justice programming for select, low-risk, minimum-security offenders. Offender community service work crews were involved in numerous community work projects across the province. Many of these projects were completed in collaboration with other government ministries, municipalities or non-profit groups.

578. A unique First Nations Court and Restorative Justice Initiative has been developed at the Alexis First Nation where Provincial Court Judges and Stony Plain Crown prosecutors share information about the criminal justice system and court procedures with the Alexis Justice Committee, Elders, and other community members. In turn, judges and prosecutors have the opportunity to build relationships with the Aboriginal community and learn about its culture, traditions, and social resources. The court, working with the community and justice stakeholders, has incorporated court-ordered supervision of offenders, interim reviews, and accountability to the community into the Alexis Restorative Justice process. The Justice Committee acts as a sentencing resource that augments pre-sentence reports by identifying cultural and social resources available at the reserve. The Justice Committee also assists the probation officer in monitoring the probation of some offenders, and in providing the court with community reviews of the probationer's compliance. These interim reviews are an important and unique component of the Alexis Restorative Justice process.

579. The Blood Sentencing Panel, officially named "Aisiimohki", which means "to discipline" in the Blackfoot language, was developed as a community options program. It operates under the Blood Tribe Department of Health and is comprised of professionals from the Blood Tribe departments including Education, Corrections, Health, and Housing. Each panel involves an Elder as the panel relies upon and promotes traditional values. The process used by the panel is formal and focused. The accused goes through an initial screening process and an assessment process. A structured program is subsequently developed. The Sentencing Panel provides the details of the program in the form of a written report to the Crown prosecutor. The prosecutor may then ask the Court to incorporate the proposed program into the terms of a probation order. To support and encourage rehabilitation, the offender is provided assistance and direction through the process. A condition of being referred to the Aisiimohki is that the accused must plead guilty in court and accept responsibility for the criminal act. The Blood Tribe has also established the Blood Tribe Youth Justice Committee, which received ministerial

sanction pursuant to section 18 of the *Youth Criminal Justice Act*. This initiative is also managed by the Blood Tribe Department of Health and is closely related to the Blood Tribe Sentencing Panel.

580. The Edmonton Crown Prosecutors' Office and the Aboriginal Justice Initiatives Unit have started working with Aboriginal justice stakeholders and community partners in the Edmonton area to develop an Adult Aboriginal Justice Committee. Similar in concept to the Edmonton Native Youth Justice Committee, the proposed committee will be made up of community volunteers and Elders and will provide a sentence advisory role to the Provincial Court of Alberta in Edmonton when Aboriginal offenders are involved.

581. The Lethbridge Crown Prosecutors' Office has also been closely involved in developing an innovative urban Aboriginal initiative, the Lethbridge Urban Sentencing Circle. In November 1999, two young Aboriginal residents became the first accused persons to be brought before the Circle. The process was inaugurated with the cooperation of the Provincial Court of Alberta, the Lethbridge Crown Prosecutors' Office, the Lethbridge Police Service and Lethbridge Community College. The Circle continues to operate successfully.

Youth Justice

582. Alberta's Youth Justice Committee Program was recognized with a gold award from the Institute of Public Administration of Canada (IPAC) in August 2002. Youth justice committees in communities across the province work to resolve legal conflicts through alternative measures, community service work and meeting the victims and community members. A five-member jury from IPAC, which is a non-profit organization that provides networks and forums dedicated to fostering excellence in public service, selected Alberta youth justice committees for the gold award from among 132 federal, provincial and municipal government entries.

583. Alberta Solicitor General and the Alberta Mental Health Board work together on an ongoing basis to ensure enhanced mental health services for young offenders. The intent is to provide timely assessment and treatment of young offenders with mental health issues. Staff will be provided with the knowledge and ability to appropriately respond to youth with mental health problems. A Mental Health Diversion Committee has been established to examine ways to divert youth with mental illness from the formal criminal justice system.

584. Many initiatives have been developed to address the needs of youth offenders, including, for example:

- Mental Health units have been created in the Calgary and Edmonton Young Offender Centres. These units feature an enhanced staffing pattern that reduces the need for confinement.

- Programs to meet the therapeutic needs of female offenders have been introduced which complement existing programs by providing a clinical, more intensive approach.

- Native Elders have been contracted individual counselling to Aboriginal youth. The Correctional Services Division contracts the operation of two adult Aboriginal minimum-security camps and one community correctional centre. Aboriginal groups hold the contracts and services are provided to Aboriginal offenders. Additionally, the division contracts an Aboriginal Adolescent Substance Abuse Treatment Centre and an Aboriginal young offender group home. Aboriginal Elders and Aboriginal community members attend correctional and young offender facilities regularly to provide cultural programs to offenders. These programs focus mainly on Aboriginal culture and spirituality.

- Additional training opportunities are available to employees and contracted staff in order to enhance their knowledge and ability to appropriately respond to youth with mental health problems.

- Community transition workers have been put in place in Calgary and Edmonton to assist youth leaving custody.

585. In anticipation of new sentencing options under the *Youth Criminal Justice Act*, Alberta piloted Youth Attendance Centres in Edmonton and Calgary. These non-residential facilities house a variety of programs to address the non-residential sentencing option, however, this option is only available in the two cities where the Youth Attendance Centres are located.

586. Policies and Procedures that guide the administration of youth justice in the community and in youth custody facilities have been revised to reflect changes in federal legislation. The federal legislation includes provisions for provincial and territorial jurisdictions to offer programs necessary for certain sentences, or to "opt out"; advising youth justice court judges that the sentences are not available. Alberta has chosen to offer most sentences that contain this provision, including non-residential orders, intensive support and supervision, and intensive rehabilitative custody and supervision.

587. Alberta's first comprehensive court facility for child victims opened in Edmonton Provincial Court to help children who have to testify at criminal trials. The child-friendly facilities consist of a waiting room with its own washroom and courtroom with a back entrance for the child. The facilities prevent the child victim from seeing the accused while testifying and aim to make the court process less intimidating for children. The courtroom and waiting room are wired with two-way communication for the rare instances where a child is unable to testify in the courtroom. The project was the result of a partnership between Alberta Justice, Alberta Solicitor General, the Edmonton Police Service, the Zebra Child Protection Centre and the John Howard Society's Victims' Assistance Program.

588. In February 2000, the Lethbridge Fetal Alcohol Spectrum Disorder Committee was created to focus on FAS issues in the justice system. Committee members represent the police, prosecution, probation, defence bar, two school boards, the medical profession, Aboriginal people and provincial and municipal agencies involved with child welfare issues. A process was established to identify those cases in which the needs of society for protection and the needs of the FAS sufferer for support can be met by early intervention and deployment of community resources to provide a daily living plan for the youth as part of any criminal justice system outcome required by the nature of the case. In addition, members of the Calgary Crown Prosecutors Office have participated in FAS training sponsored by the Calgary Police Service.

589. The Piikani Nation established the P.E.I.gan Nation Youth Traditional Justice Circle which was sanctioned as a Youth Justice Committee pursuant to section 18 of the *Youth Criminal Justice Act*. The Circle functions in accordance with Piikani traditions and receives youth referrals at various stages including pre-charge diversion, post-charge diversion or after a guilty plea is entered. In each case, the Circle convenes and a report is submitted to the prosecutor for presentation to the court. The Circle utilizes a very formal process and relies on volunteers including tribal Elders. The Lethbridge Crown Prosecutors' Office continues to work closely with the Piikani Nation on this successful initiative.

590. Crown prosecutors from the Red Deer office have met with community Aboriginal service agencies to establish a Youth Justice Committee for Red Deer Aboriginal youth. Currently, several Elders and community members have expressed interest in functioning in a community justice forum format and accepting diversion referrals from the Crown's office.

Article 14: Fair trial rights

591. Alberta's small claims limit was raised to $25,000 to improve Albertans' access to justice in civil court. People are now able to pursue civil claims of up to $25,000 in Provincial Court, Civil Division, rather than in the Court of Queen's Bench, which has more complex procedures and generally requires a lawyer. The increase took effect November 1, 2002 and is the highest small claims limit in Canada.

592. The *Victims Restitution and Compensation Payment Act* was passed in November 2001. The Act allows civil courts to order that illegally obtained property and profits of illegal activities be returned to their rightful owners. It also allows civil courts to order that assets owned by a convicted offender be transferred to the victim up to the value of a restitution order. In cases where no victim can be found, or where the offence committed has no identifiable victim (such as drug trafficking and gaming offences), proceeds and property may be paid to programs that support victims of the type of crime that has been committed, or to the Alberta Victims of Crime Fund. The Act has not yet been proclaimed.

593. The *Protection Against Family Violence Act* was passed in 1998 and proclaimed in force June 1, 1999. It focuses on protection rather than punishment and, through the Emergency Protection Order (EPO), allows police to remove the abusive family member from the home. In 2002/03, training to victim services workers, court staff, Crown prosecutors and police in Calgary, Fort McMurray, Grande Prairie and Lethbridge was provided.

594. Legislative reforms have been made that increase the independence of the sitting and presiding justices of the peace, including establishing an independent Judicial Compensation Commission that publicly examines and recommends their pay and benefits.

Aboriginal initiatives

595. Promotion of culturally sensitive approaches to prosecutions: A three-phase Aboriginal Cultural Understanding training strategy has been developed. Phase III focuses on the legal issues related to dealing with Aboriginal people in court.

596. The Provincial Court of Alberta sits at the Siksika Nation, and is served by a dedicated Crown prosecutor from the Calgary Crown Prosecutors' Office. This arrangement permits the Crown prosecutor to form a close working relationship with the Nation and supports the provision of culturally sensitive prosecution services. While every effort is made to have a judge of Aboriginal heritage preside at Siksika Nation, there may be instances where it is not possible and another judge would be assigned to the hearing.

597. The Southern Alberta Institute of Restorative Justice started in the spring of 2001. The Lethbridge Crown office was instrumental in developing this initiative with both Alberta Justice and Lethbridge Community College providing funding.

598. The Tsuu T'ina Nation Court and Peacemaker Initiative blends Aboriginal justice traditions, including an Office of the Peacemaker, with the Provincial Court of Alberta. The judge, Crown prosecutor, judicial clerks and peacemakers are all Aboriginal people. The Tsuu T'ina Court has jurisdiction over offences that have taken place on the Tsuu T'ina Nation. The first sitting of this court was on October 6, 2000. Local Peacemakers and Elders are directly involved in the initiative and are referred cases that have been diverted from the criminal justice system as well as cases that require dispute resolution. Cases can be referred to the Peacemaker's Office by the Provincial Court, the police, schools, the Tsuu T'ina Band Administration or by a community member.

599. As recommended by the Cawsey Commission in the publication *Justice on Trial - Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta* (1991), the Chief Judge of the Provincial Court of Alberta or his designate has the authority to supervise Aboriginal Justices of the Peace. Supervision by the Chief Judge of the Provincial Court enhances the judicial independence of these positions. Since the completion of the report, three Provincial Court judges of Aboriginal heritage have been appointed.

600. Regular sittings of Provincial Court are held at the Dene Tha First Nation in Assumption (Chateh Reserve) throughout the year. This substantially reduces travel for residents who would normally be required to attend court in High Level nearly 100 kilometers away. An agreement is also in place for the Fort McMurray circuit court to have Provincial Court sittings at the Janvier Nation as required.

Article 17: Right to privacy

601. Alberta's *Health Information Act*, proclaimed into force in 2001, establishes the rules for the collection, use, disclosure, and protection of health information primarily in the publicly funded health sector. The Act provides an individual with the right to access his/her own health information, to request correction or amendment of that information, and access to a third party arbiter in situations where the individual believes that health information was inappropriately collected, used, disclosed or protected.

602. The privacy of people receiving social assistance was covered in the provisions of Alberta Human Resources and Employment's new *Income and Employment Supports Act*. This Act was passed this year and proclamation is expected in 2004. The Act requires any person employed in assisting the administration of the Act to preserve the confidentiality of personal information which comes to the department's attention under the Act. The collection, use and disclosure of this information is restricted.

Article 23: Protection of the family, right to marriage and equality between spouses

603. There are many parent education programs aimed at educating parents on issues around parenting after separation and/or divorce, and learning new skills to help reduce the conflict between the separated parents. They include the *Parenting after Separation* seminars, the *Focus on Communication in Separation* program and the *Communications in Conflict* program.

604. The Dispute Resolution Officer Pilot Project began on December 1, 2001 in the Calgary Court of Queen's Bench. A similar project, the Child Support Resolution Officer Pilot began in Edmonton on September 1, 2002. This project is also mandatory for all self-represented parents raising an issue with respect to child support in an application. Through the use of either the Dispute or the Child Support Resolution Officers, parents are benefiting from the experience of the pilot projects and saving time and money by not having to participate in a lengthy court process

605. The Judicial Dispute Resolution (JDR) Pilot Project became an ongoing program in Provincial Court, Family Division. JDR helps people involved in family law and child protection matters in Provincial Court resolve their concerns without the need for a trial. A judge assists the parties in negotiating a resolution, or if resolution is not possible, offers an opinion about what his or her decision would be if that information were heard

in a trial. The judge's decision is not binding, but is provided to help the parties with their settlement negotiations.

606. In May 2003, the provincial government introduced Bill 45, the *Family Law Act* in the provincial Legislature. The legislation consolidates provincial family legislation while updating it to reflect current legal practices and making it easier for Albertans to understand. Most amendments fall into the following areas: guardianship; parenting (formerly custody and access); contact with a child; child support; spousal and adult interdependent partner support; and parentage. The legislation will also abolish seldom-used legal actions that no longer reflect current legal or social understandings of personal relationships.

607. The Aboriginal Family Courtwork Program is funded entirely by the Alberta Government, and provides an opportunity for families appearing before the Provincial Court of Alberta Family Court to have access to culturally appropriate, reliable assistance during the court process. The Family Courtwork Program is available at all family court circuit points in Alberta. In areas with a greater concentration of Aboriginal people and in larger population centres, courtwork services are provided for each court sitting. In other areas, courtworkers attend court on an "on-call" basis, if a client requests that they be present.

608. The Alberta Ministry of Children's Services was established in 1999 and signified the commitment of government to supporting the best interests of children, youth and families. Core businesses of the Ministry are:

- Promoting the development and well-being of children, youth and families
- Keeping children, youth and families safe and protected
- Promoting healthy communities for children, youth and families.

609. The *Adult Interdependent Relationships Act* was introduced in the legislature in May 2002. The legislation amends 68 Alberta laws to address the legal needs of unmarried Albertans involved in committed, interdependent relationships. The act came into force June 1, 2003. The act covers a range of personal relationships that fall outside the traditional institution of marriage, including committed platonic relationships where two people agree to share emotional and economic responsibilities.

Article 24: Rights of the child

610. Reciprocal agreements enable the Maintenance Enforcement Program to collect and disburse support payments on behalf of Albertans who have support orders with someone who lives outside of the province. New agreements were reached with the U.S., the Slovak Republic, the Czech Republic and the Republic of Poland. Alberta also has reciprocal agreements with 30 jurisdictions, including all Canadian provinces and territories, Australia, Germany, Norway, New Zealand, Austria, South Africa, and the United Kingdom.

611. The province of Alberta is committed to fostering healthy pregnancies and positive birth outcomes. As women plan to have children, and while they are pregnant, they have universal access to prenatal health care provided by physicians, registered midwives, and community-based prenatal education programs. Information/support to assist them in practicing healthy behaviors during pregnancy related to nutrition and use of tobacco, alcohol and other substances is also available. More vulnerable populations may access specialized supports such as nutritional supplements for low-income pregnant women, culturally appropriate counseling, and support programs. Through physicians, registered midwives, and Regional Health Authorities women have access to publicly funded intrapartum (labor and delivery) care and a wide range of postnatal services and programs to support a healthy start in life and provide care to newborns with health concerns.

612. As noted in Article 9, the Child, Youth and Family Enhancement Act clarifies and strengthens the involvement of Aboriginal communities in planning for their children. The Act identifies that uniqueness of culture, heritage, spirituality and traditions be respected and considered and that preserving a child's cultural identity be given importance. For more information, please refer to the Children's Services website at http://www.child.gov.ab.ca/whoweare/childwelfareactreview/page.cfm?pg=index.

613. Detailed statistical information regarding the rights of children can be found in Canada's responses to the list of issues of the Committee on the Rights of the Child, available at: http://www.pch.gc.ca/progs/pdp-hrp/docs/crc-2003/rep_e.cfm.

614. In 1997, the Alberta Task Force on Children Involved in Prostitution was established to review the issue of juvenile prostitution. A key recommendation of the Task Force was that legislation be developed to protect children from abuse. Alberta's *Protection of Children Involved in Prostitution Act* was proclaimed February 1, 1999. Amendments to the *Act* were proclaimed March 15, 2001. The Act recognizes that children and youth under the age of 18 years who are exploited by prostitution are victims of child sexual abuse and are therefore in need of help and protection.

615. The Act enables police and child protection workers to apprehend children engaging in or attempting to engage in prostitution. A range of community support programs is in place to help children who may wish to leave prostitution. The amendments proclaimed in 2001 enhanced the support provided to children and ensures that their legal rights are protected. The amended Act extended the length of the initial confinement period from three days to a maximum of five days each. In addition, a process to allow access to legal representation was also developed.

616. The review of Alberta's *Child Welfare Act* was announced by the Honourable Iris Evans, Minister, Alberta Children's Services on May 23, 2001. The *Child Welfare Amendment Act* received Royal Assent May 16, 2003 and the new Child, Youth and Family Enhancement Act will likely be proclaimed in 2004. This Act provides the legislative base for the provision of a range of services to children and families in cases where children are found to be "in need of protective services". The rights of children have been enhanced in this *Act* through a requirement that the Director of Child Welfare

consolidate and inform children of their procedural rights under the legislation. *New Directions in Child Welfare: Overview of Significant Changes in the Child, Youth and Family Enhancement Act* can be viewed at (Go to Updates Section) http://www.child.gov.ab.ca/whoweare/childwelfareactreview/page.cfm?pg=index.

Article 25: Civic responsibility and political participation

617. In Alberta, offenders in remand, those serving ten days or less, or those sentenced for non-payment of fines may vote in provincial elections.

618. The Aboriginal Policy Framework (APF) reflects the principle that enhancing the well-being of Aboriginal Albertans is a government-wide responsibility. While respecting the responsibility of the federal government to provide services to First Nation communities and persons, the APF also contains the principle that Aboriginal people have access to provincial public services that are enjoyed by other Albertans in communities of similar size and geographic location.

619. Among the activities being undertaken in support of this principle is the development of an Aboriginal policy "checklist" to review existing and future policies to ensure that they meet the needs of Aboriginal people. In 2003, over 600 provincial employees were provided with Aboriginal cultural awareness training as part of an ongoing initiative to enhance the understanding within the public service of the cultural heritage and diversity of Aboriginal people in Alberta.

Article 27: Religious, cultural and linguistic rights

620. In September 2000, the Government of Alberta approved a government-wide Aboriginal Policy Framework (APF) entitled "Strengthening Relationships" containing a number of principles and commitments to action to guide the province's relationships with Aboriginal people and to enhance their socio-economic well-being. One of the principles in the APF is the Government of Alberta recognizes, in principle, the inherent right of self-government. The APF goes on to say that the Government of Alberta will focus its efforts on establishing self-government arrangements with Aboriginal people living on recognized Aboriginal land bases.

621. Since September 2000, the Government of Alberta has participated with Canada and the Blood Tribe in discussions pertaining to the governance of child welfare related matters and with Canada and Treaty 8 First Nations in exploratory discussions regarding self-government.

622. The Aboriginal Policy Framework recognizes that the languages, cultures, traditions and values of Aboriginal people in Alberta contribute positively to the province's vitality and that cross-cultural awareness and understanding is an important component of an inclusive Alberta society.

623. Alberta Aboriginal Affairs and Northern Development provides grants to communities and organisations directed to building cross-cultural awareness and the preservation of Aboriginal culture. Since 1995, the department has provided $1,855,000 in grants for this purpose.

British Columbia

Article 2: Equal rights and effective remedies

624. Changes to the *Human Rights Code* were introduced in 2003 to make the human rights system more accessible, timely and efficient. The new system eliminated the Human Rights Commission in favour of an independent Human Rights Tribunal that is directly responsible for receiving, investigating and adjudicating cases. The Tribunal emphasizes mediation, to encourage faster and less expensive resolution of complaints. The Ministry of Attorney General retains responsibility for human rights education.

625. In concert with the establishment of the Tribunal, government established a contractual relationship with the British Columbia Human Rights Coalition to deliver education and training programs to the public, and with the Community Legal Assistance Society to provide legal advice and assistance to complainants and respondents.

626. The Ministry of Community, Aboriginal and Women's Services has developed a three-step model called the Critical Incident Response Model, which focuses on facilitating a dialogue between key community representatives on racism and hate and a protocol to address such issues. In 2003, the ministry funded a province-wide tour with the BC Human Rights Coalition (BCHRC). Two representatives travelled around the province to talk about racism, and the process to file a human rights complaint with the Human Rights Tribunal.

627. The Legal Services Society is funded to provide legal aid in British Columbia. The Society has restructured its delivery model and has developed creative new approaches such as providing family duty counsel. Government continues to provide programs worth $25 million to assist families in solving legal disputes outside the court system.

628. The Learning Services Branch of the Public Service Agency provides the following courses to civil servants: Discrimination Prevention Workshop, Aboriginal Cultural Awareness, Culturally Responsive Service Delivery, Discover Ability, Valuing and Welcoming Diversity in the Workplace. The Discrimination Prevention Workshop is mandatory for all new employees.

Article 3: Equal rights of men and women

629. 24% (19 of 79) of Members of the Legislative Assembly are women (including Cabinet and Opposition members). Of the 28 members of the Executive Council (the Premier and Cabinet Ministers), 7 are women (25%).

630. Of 182 local governments, women lead 38 (20.8%) including:

- City Mayors (7 of 45)

- District Mayors (13 of 49)
- Island Municipality (1 of 1)
- Resort Municipality (0 of 1)
- Town (3 of 15)
- Townships (0 of 3)
- Village (8 of 40)
- Regional District Chair: 6 of 27
- Indian Government District Chief Counsellor: 0 of 1.

631. Aboriginal Community Leadership (Band Councils): 8 of 39 Nisga'a Lisims Government elected officials were women. As of 2002, 20% of Band Council Chiefs were women (39 to 197).

632. With respect to the question about assessment of the impacts of budget cuts on social programs, the Ministry of Human Resources does not collect client information with respect to visible minorities and aboriginal status. It is not possible nor has it been the ministry's desire to single out and identify its caseload by visible minority or aboriginal status.

633. The Government of British Columbia, through the Ministry of Community, Aboriginal and Women's Services:

- provides $26.5 million in funding for transition houses, including second-stage housing and safe homes, as well as individual and group counselling;
- funds community agencies throughout the province working in the areas of trafficking and sexual exploitation of women, low-income women, violence against women, employment and health care;
- develops policy in the area of preventing violence against women and enhancing their safety;
- is implementing a child care strategy for the province to ensure accessible, safe and affordable child care;
- through the Vancouver Agreement, creates social and economic opportunities for women including improving health, enhancing public safety and increasing employment;
- provides a service for low-income women with children who are leaving transition houses to ensure that women leaving abusive relationships who do not have safe, permanent housing receive priority when affordable housing units become available;
- contributes to projects undertaken by the Federal/Provincial/ Territorial Status of Women Forum, including "Women's Economic Independence and Security" (2001), "Assessing Violence Against Women: A Statistical Profile" (2002), and "Workplaces that Work" (2003), which sets out a strategy for how employers can encourage employment and retention of women in the workplace.

634. The British Columbia government included gender equity as a principle of the new British Columbia policy on Sport and Physical Activity and as eligibility criteria for provincial sport organization funding. It has also provided funding to Promotion Plus, an

agency that works specifically to promote gender equity and participation for women and girls in sport and physical activity. Promotion Plus aspires to develop an equitable sport system for women and girls in British Columbia by increasing levels of participation, leadership and policies through Recognition, Consultation, Education and Development programs.

635. The British Columbia government supported Promotion Plus' "Instrumental Guidance and Advocacy" for gender equity programs for sport and recreation - including its involvement in a landmark BC Supreme Court decision in respect to gender equity in Coquitlam's municipal recreation facilities.

Article 6: Right to life

636. Statistics on birth rates, infant mortality and suicides are provided below:

Birth rate by gender

	1995		2001		2002	
Gender	**Live Births**	**Rate per 1000 population**	**Live Births**	**Rate per 1000 population**	**Live Births**	**Rate per 1000 population**
Male	24,111	6.37	20,734	5.06	20,604	4.98
Female	22,557	5.96	19,662	4.79	19,314	4.66
Unknown						
Total	46,668	12.33	40,396	9.85	39,918	9.64

Infant mortality by gender

	1995		2001		2002	
Gender	**Deaths**	**Rate per 1000 live births**	**Deaths**	**Rate per 1000 live births**	**Deaths**	**Rate per 1000 live births**
Male	151	3.24	86	2.13	108	2,71
Female	124	2.66	76	1.88	70	1.75
Unknown						
Total	275	5.89	162	4.01	178	4.46

Suicide rate

	1995		2001		2002	
Gender	**Deaths**	**Crude rate**	**Deaths**	**Crude rate**	**Deaths**	**Crude rate**
Male	406	0.11	334	0.08	320	0.08
Female	109	0.03	103	0.03	91	0.02
Total	515	0.14	437	0.11	411	0.10

637. BC Housing provides affordable housing for the homeless or those at risk of homelessness (e.g. individuals with alcohol/drug dependencies, with HIV/AIDS, and

youth), persons with a mental illness, and seniors and other individuals with special needs, many of whom are women; and shelter aid for elderly renters, of which the majority of recipients are female (77 percent).

Status Indians

638. The following information is taken from a regional analysis of health statistics for Status Indians for the period 1991- 2001, prepared by the Vital Statistics agency of the Province of British Columbia.

Births

639. Over the period 1991 to 2001, one out of every 14 babies born in the province was a Status Indian. There were 34,731 Status Indian live births, or 23.6 per 1,000 Status Indian population, more than twice the rate for other residents.

640. The Status Indian population accounted for less than one out of every 12 low birth weight births in the province over the 11 year period. One out of 10 premature live births in B.C. in 1991-2001 was a Status Indian baby. The Status Indian caesarean section rate was 20% lower than the rate for other residents for 1991-2001.

641. From 1991 to 2001, more than one in four teenage mothers in the province was a Status Indian. The Status Indian live birth rate for teenage mothers was four and a half times the rate for other residents.

642. There has been a significant decrease in infant mortality in the Status Indian population. Status Indian infant mortality rate showed a dramatic decline from 14.7 infant deaths per 1,000 live births in 1995 to 4.0 in 1999 and 2000, and 4.3 in 2001. Infant mortality also declined in this time period for other residents, dropping from 5.2 to less than 4.0.

Fetal Alcohol Spectrum Disorder (FASD)

643. British Columbia has been considered a leader in FASD prevention, support and intervention. There are key provincial initiatives launched by government in recent years such as the Aboriginal Early Childhood Development programs and Building Blocks programs located throughout the province. The British Columbia government has approved the first comprehensive plan for responding to FASD in Canada.

644. This strategic plan for British Columbia summarizes the current research on FASD and identifies the resources available from all levels of government. The intent of the plan is to provide policy makers, service providers, community groups and researchers with a map of the multi-layered and multi-faceted work involved in the prevention, intervention and support for FASD thereby setting the framework for more solutions to be found.

645. In 2001, British Columbia joined the Prairie Northern FAS Partnership. Now called the Canada Northern FASD Partnership, this is an alliance among the four western provinces

and three territories. The goal is to partner in the development and promotion of an inter-provincial/territorial approach on the prevention, intervention, care and support of individuals affected by FASD.

646. British Columbia has entered into a two year partnership with the Assante Centre for Fetal Alcohol Syndrome with funding support from the federal government to develop and implement a best-practice service delivery model for youth before the court suspected of having an alcohol related diagnosis.

Preventing Suicide in First Nations Communities

647. Between 1999 and 2001, several small-scale, community-based youth suicide prevention projects were funded by the Ministry for Children and Families (through Mheccu, UBC). The purpose of these projects, some of which were implemented in First Nations communities, was to implement comprehensive approaches to youth suicide prevention based on the best practices identified by White & Jodoin (1998). First Nations communities adapted the strategies to fit their context and placed significant emphasis on developing and implementing culturally relevant training, strengthening relationships between elders and youth, and teaching and renewing traditional healing practices.

648. A copy of the Final Evaluation Report, which summarizes key learnings from this initiative, is available from: http://www.mheccu.ubc.ca/SP/publications/.

Article 7: Protection against torture

649. British Columbia has introduced a set of Core Programs for inmates of provincial correctional centers that are intended to promote long term behavioral change in these individuals. Programs are tailored for individual inmates, based on risk and needs assessment of offenders. These programs include a Violence Prevention Program, a Respectful Relationships Program, a Sex Offender Maintenance Program, and a Substance Abuse Management Program as well as education upgrading programs. These programs reduce the risk that these individuals might re-offend when they are returned to the community.

650. There have been no new measures with regard to medical experimentation or training of medical personnel, law enforcement officials or prison guards during the reporting period. Abuse of prisoners is not permitted within the British Columbia corrections system. Abuse allegations are investigated internally and may be reviewed by oversight agencies such as the office of the Provincial Ombudsman and the Investigation, Inspection and Standards Office of the Ministry of Solicitor General.

Article 9: Right to liberty and security of person

651. In 1997/98 changes were introduced to the process for making complaints concerning police conduct. Previously the Police Complaints Commission had the responsibility both for setting policy and standards for policing (other than for the RCMP, which is

under federal jurisdiction), as well as for receiving and oversight of complaint investigations. Following the recommendation of a Commission of Inquiry, the policy and standards function has moved to the direct responsibility of the province. An independent Police Complaints Commissioner is now in place and has increased authority in the oversight of complaint investigations. The actual investigation of a complaint is conducted by the police department directly involved, or another department. The decision on which agency will investigate is made by the Complaint Commissioner. The Complaint Commissioner also has authority to return the investigation report for further work if not satisfied with the quality of the investigation. It is also within the authority of the Complaint Commissioner to call for a public hearing if it is deemed in the public interest.

652. All persons detained in corrections facilities are detained pursuant to detention orders imposed by the court or by federal immigration officials and are supported by proper legal authority and documentation. All prisoners have access to the courts and oversight agencies for the review of their detention.

Article 10: Treatment of persons deprived of liberty

653. In 1999 several hundred Chinese migrants arrived illegally by boat and container ship on the shores of British Columbia. At the request of Citizenship and Immigration Canada (CIC), over 400 adult migrants were detained at provincial correctional facilities. During the period of detention, migrants were provided with a variety of services, including healthcare, English as a Second Language, recreation, institutional work opportunities, counselling, interpreter/translation services and communication with their families in China was facilitated. Staff at facilities housing migrants received cultural training and were provided access to Chinese language training. The International Red Cross provided independent regular monitoring of detention conditions. The United Nations High Commissioner for Refugees also monitored conditions. All of the migrants were either returned to China or granted refugee status by mid 2001.

654. With regard to treatment of accused as compared to convicted persons, there are no new measures to report. Accused persons are treated similarly and receive the same services as convicted persons with the exception that accused persons are not required to perform work (except where they consent), and they are unable to access the same level of programming as convicted persons as they are generally incarcerated for short periods of time-generally less than 30 days. Accused persons are also held separate and apart from convicted persons.

655. Specific measures applied during detention:

- Convicted persons are categorized according to risk, based upon established criteria.
- The disciplinary system for offenders is codified and subject to the principles of administrative law and independent review or judicial review.
- Solitary confinement is established in regulations and is subject to a review process, internally and by external oversight agencies.

- Convicted and accused persons are entitled to receive and send communications through the postal service (the Corrections Branch pays postage for 7 letters per inmate per week) subject to limitations for institutional security and protection of the public.
- Accused and convicted persons have regular telephone access through telephones installed on inmate living units to make outgoing calls. A new phone system makes more telephones available and gives enhanced access to telephones to inmates. The system is limited only to the point of maintaining institutional security and protection of the public.
- Accused and sentenced persons have fully subsidized access to legal counsel and designated oversight agencies.
- Medical services are equally available to accused and convicted persons. On the basis of identified need, basic dental and psychological services are available to offenders.

Psychiatric facilities

656. The *Mental Health Act* RCBC 1996 ch 288 outlines the conditions under which a person may be detained in a psychiatric facility.

657. A person may enter a psychiatric facility as a voluntary or an involuntary admission. An involuntary admission requires a medical certificate by a physician, in a specified format. A second medical certificate must be completed by another physician within 48 hours. The condition of the involuntary patient must be reviewed before the end of the first one month period from admission, at which point the person's stay may be extended, by one, three or six month periods. The involuntary patient, or a person acting on their behalf, may appeal this decision to a review panel, which is made up of a chairperson, a physician appointed by the facility, and a third person appointed by the patient. A patient or a person on behalf of the patient may appeal to the court if they feel that there is not sufficient reason or legal authority for the medical certificate which admitted the patient.

658. A person can also be detained in a hospital for up to 48 hours on a warrant from the provincial court for the purpose of a medical examination to determine whether they should certified as an involuntary patient. This must only be used if there is no other way to examine the patient.

659. The Act outlines the conditions under which a patient may be detained in an emergency. A police officer may be authorized to apprehend and take a person to a physician for examination if the person is acting in a manner likely to endanger that person's own safety or the safety of others and the person has an apparent mental disorder. The person must be released if a physician does not complete the medical certificate required for admission to a facility. If there are concerns about the mental condition of a person imprisoned, detained in a correctional centre or youth custody centre, two medical certificates are required, following the requirements for an involuntary admission. On determination of a complete or partial recovery, the person may be returned to the correctional centre, or be discharged.

660. A person may also enter a psychiatric facility if, under the Criminal Code they are found not criminally responsible on account of a mental disorder or is found unfit to stand trial on account of a mental disorder. If they are order to be detained in a mental health facility, the person must receive appropriate care and treatment as authorized by the director of the facility.

661. Inpatient categories of care:
- Psychiatric Intensive Care Unit – a locked unit for patients requiring the highest level of observation and containment. Provides secure care to ensure prevention of harm to the patient or to others until the condition improves;
- Adolescent in-patient unit – a unit where youth are cared for separately from adults;
- Geriatric care – specialized units for geriatric patients with psychiatric conditions. If there is a need to mix seniors with the general adult population, it is preferable, due to the fragile nature of these patients, to assign them to a geriatric medical ward than to an adult psychiatric ward.

662. Best practices for the provision of mental health services are found at the following website: http://www.healthservices.gov.bc.ca/mhd/.

663. In addition the Ombudsman office can review complaints regarding the actions of public bodies including "hospitals, regional and local health agencies, and health-related government agencies such as Medical Services Plan and Pharmacare.

Article 14: Fair trial rights

664. In July 2001, the Province initiated the Administrative Justice Project, a comprehensive examination of the province's administrative justice system. The Project included a review of 67 administrative tribunals, including reviews of their independence and accountability, dispute resolution procedures, and their jurisdiction to make decisions under the *Canadian Charter of Rights and Freedoms*. The Project released reports and a White Paper for public review. In response, Government took immediate steps to implement the Project's recommendations. A program of law and policy reform was approved and initiated. The Administrative Justice Office was established to lead the implementation and to develop a permanent centre of excellence on administrative justice reform. The Office has released its first annual report on its activities for the year 2002/03.

665. *The Provincial Court Amendment Act* 2002 strengthened judicial independence by clarifying the role and powers of Judicial Justices of the Peace.

Youth Justice

666. Since joining the Ministry of Children and Family Development in 1997, Youth Justice Services have been significantly enhanced based on the principle of integrated and multi-disciplinary case management.

667. A $2 million increase was provided for addiction treatment services for young offenders including new residential treatment beds specifically for females and Aboriginal youth.

668. The total annual budget for funding drug and alcohol services is approximately $3.3 million which includes: 24 residential treatment beds, Youth Substance Abuse Management Programs, (educational and treatment readiness programs available in custody and the community), group and individual addiction counseling services in all youth custody centres, and enhancements to Youth Forensic Services, including rehabilitative programs for violent young offenders and the addition of a clinical services unit at the new Victoria Youth Custody Centre.

669. BC has the lowest per capita rate of youth on probation in the country, and the lowest per capita youth custody rate in Canada (less than one half the national average).

670. A declining demand for custody beds has facilitated the redeployment of additional custody staff to the community intensive support and supervision programs (a total of 18 custody staff working in the community). A contributing factor has been this Ministry's increase in the number and range of community-based services including the expansion of intensive support and supervision programs in the community, particularly in rural communities.

671. In preparation of the implementation of the federal *Youth Criminal Justice Act* earlier this year and with funding support from the federal government through the young offender cost-sharing agreement, 11 probation officer positions have been designated as restorative justice conferencing specialists.

672. British Columbia welcomes the emphasis in the Act on the rights of victims, the value of restorative justice approaches, the need to deal with minor offenders outside the formal court system, and the need to reserve custody for only the most serious offenders. Court procedures change significantly, and judges will have a wider range of sentencing options. The Act also promotes intensive intervention and treatment for serious violent offenders who suffer from mental disorders and addictions.

Article 17: Right to privacy

673. On January 1, 2004, British Columbia's *Personal Information Protection Act* came into force. This Act limits the amount of personal information that businesses, non-profit organizations and charities can collect from clients, customers, employees and volunteers, and sets out how that personal information can be used and disclosed. It strikes a balance between a citizen's right to control access to and use of his or her personal information with an organization's need to collect, use and disclose personal information for legitimate and reasonable business purposes. Citizens also have a right to see, and ask for corrections to, their personal information held by organizations. In addition to protecting the personal information of B.C. citizens, this Act will also support electronic commerce and increase opportunities for B.C. businesses to trade with other

jurisdictions, such as the European Union, that require their trading partners to have privacy protection laws.

674. A 2003 amendment to the Freedom of Information and Protection of Privacy Act requires a Privacy Impact Assessment to be conducted prior to the introduction of any new legislation, program, or information technology initiative.

675. With regard to the protection of privacy for social assistance recipients, British Columbia is proactive in taking steps to protect individuals' right to privacy. All information collected from clients is restricted to the specific needs of the program and in accordance with the Freedom of Information and Protection of Privacy Act (FOIPPA). The Ministry of Human Resources continues to develop and implement policies/procedures, and take necessary precautions to improve the security of client information. Further to the required Privacy Impact Assessment, the ministry conducted a security/privacy audit in 2003 and is currently working to implement recommendations from that audit. It is anticipated that audits around security and privacy of information within the ministry will continue on an interval basis.

Article 23: Protection of the family, right to marriage and equality between spouses

676. In 2003, the British Columbia Court of Appeal ruled that the common law definition of marriage, which prevented same-sex couples from marrying, violated the *Canadian Charter of Rights and Freedoms*. The court reformulated the definition of marriage and same-sex couples may now legally marry in British Columbia. Since the federal government has exclusive responsibility over capacity to marry under the Canadian Constitution, if the federal government passes a law defining who may marry, that law will apply throughout Canada, including British Columbia.

Article 24: Rights of the child

677. The document "Responses of Canada to the Committee on the Rights of the Child" describes the change in responsibility from the British Columbia Children's Commission to the Office for Children and Youth.

678. New regulations have been introduced which prohibit the employment of youth during school hours. Young people between 12 and 14 may work up to 4 hours outside of school hours on a school day, with a maximum of 20 hours per week. When school is not in session they may work up to seven hours per day and 35 hours per week. Parental permission must be provided and they must be under the supervision of an adult in the workplace at all times. For children under the age of 12 permission of the director of employment standards is required. New rules have also been introduced limiting the hours of work for young people in the film industry and ensuring that a portion of their earnings are held in trust. Employers who are in violation of these rules are subject to fines of up to $10,000.

Child Care

679. In 2001, the Government of British Columbia undertook its fourth Provincial Child Care Survey of licensed Centre-based and licensed Family Child Care providers. Surveys are designed to allow for data comparability over time. As of April 2001:

- There were 2,116 licensed centre-based child care facilities (an increase of almost 15 percent since 1997) with an estimated maximum capacity of 56,053 licensed spaces (an increase of 12 percent since 1997).
- There were 2,382 licensed family child care facilities, an increase of 5 percent since 1997. The overall capacity was 16,555 child care spaces, an increase of 5 percent since 1997.

680. Based on child population, determination of child care need and number of total licensed child care spaces available at that time, British Columbia had 26 spaces per 100 children 0 - 12 in 2001.

681. British Columbia continues to provide capital and operating funding programs to child-care providers and child care subsidy to low-income parents to support their ability to afford child care.

Community Governance – Aboriginal Services

682. A Memorandum of Understanding signed September 09, 2002 between the Province and Aboriginal leaders will allow Aboriginal children to grow up and flourish in their own culture.

683. The Memorandum of Understanding established a Joint Aboriginal Management Committee to make decisions related to the safety and well being of Aboriginal children and families, and to play a role in the move of child protections and family development service delivery to regional Aboriginal authorities.

Article 25: Civic responsibility and political participation

684. A Citizen's Assembly on Electoral Reform has been established to examine the province's electoral system. The Assembly is an independent, non-partisan assembly of 160 randomly selected British Columbians who will look at how votes cast in provincial elections translate into seats in the legislative assembly. If they decide that B.C. should have a new system, their proposal will frame a referendum question that will go directly to the voters in the provincial election of May 2005. If a change is approved by voters, government has made a commitment to implement the change for the general election of 2009.

Article 27: Religious, cultural and linguistic rights

685. A historical treaty between the Nisga'a First Nation and the governments of British Columbia and Canada was signed on August 4, 1998. This was the first treaty to be signed in the province since 1899. The Nisga'a Final Agreement sets aside approximately 2000 square kilometres of land in the Nass River Valley in northern British Columbia where the Nisga'a people now own surface and subsurface resources and have a share of Nass River salmon stocks and Nass area wildlife harvests. The Final Agreement provides a financial transfer of $190 million, payable over 15 years, as well as $21.5 million in other financial benefits. The *Criminal Code*, the *Canadian Charter of Rights and Freedoms* and other federal and provincial laws of general application continue to apply. In addition, the Final Agreement specifies that personal tax exemptions under the *Indian Act* will be phased out.

686. Under the Nisga'a Final Agreement, the specified lands will be owned by the Nisga'a as fee simple property, including forest resources, subsurface resources and gravel. The Nisga'a will be able to sell or lease parcels of land. An existing provincial park and ecological reserve within the Nisga'a Lands will remain under provincial government ownership and jurisdiction, and the Nisga'a will continue to be involved in the management of these areas. A five year transition period was established for forest resources, to allow forest licensees to continue to harvest forest resources, protecting jobs and the stability of the wood processing industry. The Nisga'a may establish rules and standards to govern forest practices. These standards must meet or exceed provincial rules and standards for Crown lands, including those in the *Forest Practices Code of British Columbia Act*. The Agreement addresses public access to lands and province's responsibility for maintenance of an existing provincial highway. Standards for fisheries and wildlife management are included, as is the procedure for environmental assessment of development proposals. A governance structure is provided and the powers and authority of the governing body are specified. The Nisga'a government may assume responsibility for policing, and may also establish a Nisga'a Court, which may come in to effect if the Province is satisfied with the Court's structures and procedures. Decisions of the Nisga'a Court may be appealed to the BC Supreme Court. The Nisga'a Treaty became law on April 13, 2000.

687. Since 1992, an independent and impartial British Columbia Treaty Commission was established with the responsibility to oversee all treaty negotiations in the province with the exception of the Nisga'a negotiations, which were already in progress when the Commission was established. Since then, Canada, British Columbia and First Nations who choose to engage in the British Columbia Treaty Commission process have been negotiating treaties with the goal of bringing certainty to issues related to aboriginal rights, lands and resources, forestry, fishing, and governance. The Commission's responsibilities include allocating federal and provincial funding to First Nations to enable treaty negotiations, providing assistance to the parties as required, and promoting public education with respect to the treaty process.

688. There are six stages in the treaty making process. Significant progress has been made during the last three years, with four First Nations commencing the final stage of negotiations leading to a treaty. According to the BC Treaty Commission, the breakdown of First Nations in each stage is as follows:

	# of First Nations participating	Stage 2	Stage 3	Stage 4	Stage 5
2004	55	6	3	41	5

689. In 2002, the Government of British Columbia approved a reconciliation framework to help bridge the gaps between First Nations and government. The framework includes a public expression of regret for tragic experiences visited upon First Nations through years of paternalistic policies that fostered inequity, intolerance, isolation and indifference. It also includes a recognition of aboriginal rights, culture and heritage, as well as providing tools at treaty tables to reach agreements on the use of land and resources. The reconciliation and recognition initiative, though not about monetary compensation, is a critical component of the effort to build strong and respectful relationships between government and First Nations. It is intended to resolve key policy issues related to the treaty process and to form a partnership to work on building new approaches that will improve First Nations' quality of life, before and after treaties are concluded.

690. British Columbia has also developed a "Provincial Policy for Consultation with First Nations" for use in the interim to treaties. The policy, which is consistent with recent case law, sets out a required consultation process to inform decisions taken by the provincial government on land and resource issues that have the potential to infringe aboriginal rights and/or title asserted by First Nations in the Province.

691. Subsequent to this policy, the Province has also committed to a framework for accommodating First Nations in fulfillment of legal obligations related to government's responsibility to avoid unjustifiable infringement of aboriginal rights and title. As government ministries and agencies develop agreements with First Nations and engage in accommodation activities, benefits are expected to accrue to both the provincial economy and First Nations' stake in it.

692. For example, in 2003, government made a commitment to share forest revenues with First Nation groups. In the first year of that commitment, seven forestry accommodation agreements have been signed, committing a total of almost $28 million in exchange for provisions that promote a stable operating environment for the provincial forest and range sector. Other agencies within the provincial government are also engaged in negotiating accommodation agreements to provide similar outcomes for other sectors.

693. Between 1991 and 2003, the Province has allocated approximately $14 million to the First Peoples' Heritage, Language and Culture Council to fund a variety of projects aimed at preserving and strengthening Aboriginal languages and culture. Between 2001 and 2004, the Province has also provided $26 million to First Nations throughout British Columbia to support economic development projects.

694. With regard to the implementation of the recommendations of the Royal Commission of Aboriginal Peoples, the information in this report regarding the status of treaty negotiations and the delegation of child protection services to First Nations and Métis agencies responds to the intent of the Royal Commission recommendations.

Part III

Measures Adopted by the Governments of the Territories

Nunavut

695. On April 1, 1999 the new territory of Nunavut was created out of the Northwest Territories pursuant to section 3 of the *Nunavut Act*, S.C. 1993, c.28. Modeled on the *Northwest Territories Act* and the *Yukon Act*, the *Nunavut Act* bestows on the Government of Nunavut powers equivalent to those possessed by the other two territories. Under section 29 of the *Nunavut Act*, all territorial laws in force in the Northwest Territories immediately before division were duplicated for Nunavut on April 1, 1999. All other laws in force in the Northwest Territories on April 1, 1999 (e.g. federal laws, common law) were continued in Nunavut, to the extent that they were applicable.

Article 2: Equal rights and effective remedies

696. The *Fair Practices Act* which was duplicated for Nunavut from the Northwest Territories at the time of division, addresses the issue of equal rights of men and women.

697. The *Human Rights Act* was passed by the Nunavut Legislative Assembly on November 4, 2003. The Act makes provision for a one-year implementation period, and is to come into effect on November 5, 2004, being the anniversary date of the day on which it received assent.

Article 3: Equal rights of men and women

698. The *Human Rights Act*, which acknowledges the paramountcy of the *Nunavut Land Claims Agreement*, recognizes that everyone in Nunavut has the right to be treated with dignity and equality, and prohibits discrimination in the following areas: employment; membership in employees' organizations, trade unions, trade associations, occupational or professional associations or societies, employers' organizations or co-operative associations or organizations; provision of goods, services, facilities or contracts; tenancy; and publication of notices, signs, symbols, emblems and other representations concerning the above.

699. The Act provides that no one may be discriminated against on the following grounds: race; colour; ancestry; ethnic origin; citizenship; place of origin; creed; religion; age; disability; sex; sexual orientation; marital status; family status; pregnancy; lawful source of income; and conviction for which a pardon has been granted.

700. The impact of this new Act is such that Nunavummiut now have legislation which not only provides for more adequate human rights protection, but also makes such protection more accessible:

- a tribunal, made up of Nunavummiut, will hear cases in Nunavut;
- Nunavummiut will be able to file complaints in a simplified manner, and in their own language; and

- a third party will be able to file a complaint on behalf of a person who has been wronged.

701. The Act also acknowledges *Inuit Qaujimajatuqangit*, which is Inuit traditional knowledge.

Article 6: Right to life

702. An updated Community Plan for Homelessness has been developed by the City of Iqaluit, which is the capital of Nunavut and by far the largest community in the Territory. This Plan recommends a number of projects with the expectation that sustainable programs will be initiated. Various initiatives have provided emergency shelter, safe houses, a mental health facility, a friendship centre, and related programs. Given that Nunavut continues to experience severe housing shortages, these temporary measures provide very necessary relief.

703. The Government of Nunavut has created a portfolio on homelessness, a position that is shared between the Nunavut Housing Corporation and the Department of Health and Social Services. A homelessness strategy is being developed for all of Nunavut, as well as a long term housing strategy. The Corporation is also attempting to address the need for more affordable housing.

704. Many of Nunavut's social problems are directly linked to over-crowding and homelessness, and it is hoped that ongoing efforts by both the municipal and territorial governments to resolve housing issues will go far in alleviating these problems.

Fetal Alcohol Spectrum Disorder (FASD)

705. Corrections staff as well as members of communities involved in Community Justice Committees have been trained in recognising and working with clients who are affected by FASD. The chief focus to date has been in education, but this is being expanded in the area of diagnosis and development of treatment tools.

Article 7: Protection against torture

706. With the coming into effect of the federal *Youth Criminal Justice Act* on April 1, 2003, Nunavut availed itself of the election provisions under s. 61, and fixed the age with respect to provisions relating to presumptive offences at 16 years. This decision has the effect of permitting a young person to benefit more fully from the spirit of the Act, being one of a restorative justice approach, as set out in the Declaration of Principles set out in said Act.

Article 10: Treatment of persons deprived of liberty

707. All offenders have the option of taking programs that focus on rehabilitation and education, unless they are ineligible due to having remand status, or because their participation would be disruptive.

708. Currently all woman are housed in the facility in Fort Smith, which uses only female staff to guard female offenders. If a woman who is at this facility is pregnant, it is anticipated that she would be given an early release to have her baby. If this is not possible the individual will be provided adequate medical attention and efforts will be made to have the baby placed with a family member. If the woman is in a halfway house, arrangements might also be made for her to keep the baby in the facility.

709. In Nunavut, remanded offenders are offered the same programs as those available to sentenced offenders. Everyone is given these options, but those on remand may choose not to be in treatment, at the advice of their lawyer.

710. In accordance with Nunavut's Corrections policies and procedures, all offenders maintain their rights. Remedies available to offenders in the event of violation of their rights consist of appeal procedures which are in place. These are directed either through the Warden, or the Director of Corrections.

711. Offenders are classified as high, medium or low security, with rules set out for each classification. Remanded and sentenced offenders are classified pursuant to the guidelines, each having rules applicable to that classification.

712. The disciplinary system provides for a review of charges, and options available to the offender for the giving of evidence. The decision is made by a panel.

713. Prisoners are not placed in solitary confinement, but are sometimes segregated from the rest of the prison population. Such individuals are however given the same privileges as others, with the exception of being more restricted in their movement within the prison environment.

714. Prisoners have free access to the use of telephones but are restricted in that they may not contact a potential witness, nor may they contact individuals who have requested that they not be so contacted.

715. Respect of prisoners among detention centre officials is covered by the basic training they receive, and through supervision.

716. Prisoners who are on probation following their release from prison are in contact with probation officers in the community. Community Justice officials also work with individuals who have been released.

Article 18: Freedom of thought, conscience and religion

717. Nunavut's *Human Rights Act* prohibits discrimination on the basis of religion.

Article 24: Rights of the child

718. By letter addressed to The Right Honourable Jean Chretien, dated September 8, 2003, Premier Paul Okalik of Nunavut, expressed Nunavut's support for the objectives and principles contained in the *United Nations Convention on the Rights of the Child*. The letter further extended Nunavut's formal support for the Government of Canada's ratification of the Convention.

719. Nunavut values its children, and this formal recognition of the Convention reinforced this commitment.

Northwest Territories

Article 2: Equal rights and effective remedies

720. The *Human Rights Act* received assent on October 30, 2002. It became fully in force on July 1, 2004.

721. The Legislative Assembly is coordinating implementation of the *Human Rights Act*.

722. The Act establishes the Northwest Territories Human Rights Commission to carry out functions under the Act. The Commission is an independent agency of the Government of the Northwest Territories, providing annual reports through the Legislative Assembly.

723. Through the provisions outlined in the *Human Rights Act*, the Human Rights Commission will be responsible to promote equality and reduce discrimination for territorial residents.

724. Prohibited grounds of discrimination under the Act are race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, marital status, family status, family affiliation, political belief, political association, social condition and a conviction for which a pardon has been granted. Pregnancy, disability, multiple grounds and association are also prohibited.

725. The Human Rights Commission Office opened to the public on July 1, 2004.

726. The Commission will fulfill its responsibilities through public education initiatives and the investigation/mediation and resolution of complaints of discrimination.

727. Provisions of the *Fair Practices Act* continued in the *Human Rights Act*. The *Fair Practices Act* was repealed on enactment of the *Human Rights Act*. Complaints being heard under the older Act will continue until resolved.

728. The Northwest Territories Legal Services Board, an independent body from government, operates legal aid in the Northwest Territories.

729. In addition, the Legal Services Board is responsible for the Aboriginal Courtworker Program and Public Legal Aid and Information.

730. In 2004-2005, the Government of the Northwest Territories increased funding to allow for establishment of a separate family law clinic, to meet pressing needs and the backlog in family law.

Article 3: Equal rights of men and women

731. Of the Northwest Territories' 18 elected Members of the Legislative Assembly, two are women. None are in Cabinet.

732. The Special Advisor for the Status of Women provides a point of contact within the territorial government on issues of concern to women and advice and support to the Minister Responsible for the Status of Women. The office also administers funding which supports and provides liaison with the Status of Women Council, the Native Women's Association and other organizations that enhance the cultural, economic, political and social participation of women in society.

733. Over the past several years, lump sum payments have been made to female workers in the NWT Public Service who had not been receiving equal pay for work of equal value. The complaint was settled June 25, 2002.

734. In 2000, the *Workers Compensation Act* was amended to allow lump sum payments to be made to surviving spouses whose pensions were terminated upon their marriage or remarriage before April 17, 1985.

735. The Northwest Territories Maintenance Enforcement Program (MEP) helps children and families by monitoring, enforcing and collecting support payments. The Program has reciprocal enforcement agreements with all Canadian provinces and territories, all American states, and some foreign countries. Under these agreements, maintenance enforcement agencies in other jurisdictions can collect on behalf of the NWT Maintenance Enforcement Program for creditors who live within the NWT. This agreement also allows the NWT Maintenance Enforcement Program to collect funds from debtors who live within the NWT on behalf of other jurisdictions.

Article 10: Treatment of persons deprived of liberty

736. All staff of Corrections Service receive training on the rights of offenders to ensure offenders have their freedoms restricted as minimally as possible in order to carry out the sentences of the courts.

737. Three new facilities opened in 2002, 2003 and 2004, providing appropriate spaces for rehabilitating incarcerated female and male youth and adult males. Their designs required staff to be retrained as case managers. Time is program centred. Elders are on staff and culturally appropriate settings are provided for talk and contemplation.

738. In 2003, the River Ridge Correctional Facility in Fort Smith was redesigned to house victims of Fetal Alcohol Spectrum Disorder and other adult offenders who have mental and emotional disorders. Staff were retrained to work with the special needs of these offenders and the program is showing some success. The local community has been very supportive.

Article 14: Fair trial rights

739. Following a 1997 Supreme Court of Canada decision, the Northwest Territories Judicial Remuneration Commission was established under the *Territorial Court Act*.

740. The purpose of the Judicial Remuneration Commission is to ensure independence from Government for Territorial Court Judges through independent determination of Judges' salary and benefits.

741. The Commission's function is to conduct an inquiry every three years with respect to the salaries paid to territorial judges, and the pension, vacation leave, sick leave and other benefits provided to territorial judges. After the inquiry, the Commission prepares a report which has the same effect as if it was passed by the Legislative Assembly.

742. An independent Judicial Appointments Advisory Committee makes recommendations to the Commissioner in Executive Council respecting the appointment of Territorial Court Judges and Deputy Judges.

743. The federal *Youth Criminal Justice Act* (YCJA) came into effect on April 1, 2003. Implementation has proceeded smoothly.

744. Amendments were made in 2003 to the NWT *Young Offenders Act* and a new NWT *Youth Justice Act* into force on April 1, 2004.

745. Community Justice Committees, RCMP, Peace officers (under the YJA) and the public in seven communities received information on the new legislation in 2004 when staff from the Department of Justice travelled to do follow-up training on the federal *Youth Criminal Justice Act* (YCJA).

Article 24: Rights of the child

746. The *Children's Law Act* came into force November 1, 1998. It confirms the status of children within their families; recognizes in law the parentage of a child; provides for the mutual obligations of parents to care for and support their children; recognizes that decisions regarding custody and access to children, and the guardianship of the estates of children, should be made in accordance with the best interests of the children, with a recognition that differing cultural values and practices must be respected in those determinations; and provides in law for the timely and orderly settlement of the affairs in respect of a child and to avoid a multiplicity of proceedings in relation to the affairs of a child.

747. The *Children's Law Act* replaced the *Child Welfare Act*, the *Domestic Relations Act*, the *Extra-Territorial Custody Orders Enforcement Act*, the *Maintenance Act* and the *Minors Act*.

Article 27: Religious, cultural and linguistic rights

748. A Special Committee of the Legislative Assembly conducted a two-year review of the Official Languages Act, tabling its report, One Land – Many Voices, on March 3, 2003. The Committee made 65 recommendations. The Government responded in 2003.

749. The settlement of land claims and self-government agreements continues to be a priority for the Government. Negotiations are tripartite, with the Aboriginal organizations, Government of the NWT and the Government of Canada.

750. The Inuvialuit Final Agreement was signed in 1984. The Gwich'in Comprehensive Land Claims Agreement was signed in 1992. The Gwich'in and Inuvialuit are in Self-Government negotiations, which continue through 2004.

751. The Sahtu Dene and Metis Comprehensive Land Claim Agreement was signed in 1993. The communities of Tulita and Deline are in Self-Government negotiations in 2004.

752. The Tli Cho Lands, Resources and Self Government Agreement was signed August 25, 2003 (Dogrib). The Tli Cho Intergovernmental Services agreement has also been signed.

753. Accords have been signed with the South Slave Metis, the Akaitcho and the Deh Cho. Discussions at these tables are at various stages.

754. The creation of Nunavut on April 1, 1999 was the implementation of a clause in the Tungavik Federation of Nunavut (TFN) Comprehensive Claim, negotiated with TFN, Canada and the Government of the NWT.

755. Implementation of the signed claims continues.

Yukon

Article 2: Equal rights and effective remedies

756. In 1998 the *Yukon Human Rights Act*, was amended to add source of income as a prohibited ground of discrimination.

757. In 2002, the Yukon Human Rights Commission received from the Yukon Government an increase in base funding providing for the addition of part time legal counsel and public education positions. Addition of legal counsel on staff for the first time has contributed to building the base of knowledge of human rights law in Yukon and has provided dedicated in-house support for Commissioners, who are volunteers and primarily lay people with respect to the law. Public education activities have had a focus on building relationships among equity–seeking groups, fostering awareness of human rights and awareness of those practices/approaches/actions that build respect in a diverse community.

758. Legal aid in the territory is operated by the Yukon Legal Services Society (YLSS), an independent body from the government. In 2000, with the full support of the YLSS, the government arranged for a review of the operations of the YLSS to determine the range of issues affecting the provision of legal aid services in the Yukon and to make recommendations for change and improvement. The report was released in October 2000 and implementation of the recommendations made by the report is ongoing. Two key recommendations made in the report were to take steps to ensure that a realistic budget was established for legal aid and to provide more family law services.

759. As a result, the Yukon government has increased funding for legal aid in this jurisdiction significantly. In 1999-01and 2001-02, $425,000 in additional funding was provided to assist the Legal Services Society of the Yukon eliminate their accumulated debt for delivering the territory's legal aid program. This brought the legal aid budget to $1,356,000/year. The federal contribution to this program is $528,000 and the Yukon contribution is $828,000.

760. The Legal Services Society has since resolved their financial and operational difficulties and continues to operate at a surplus. In 2001, they were able to expand the legal counsel they provide to families to cover: applications for permanent custody of children in the Yukon Supreme Court; applications to vary support orders in the Yukon Supreme Court; and representation in certain proceedings under the *Family Violence Prevention Act*.

761. New administrative measures to facilitate proceedings include the use of videoconferencing in the Yukon courts. One rollabout Tandberg 800 unit was purchased with funding from Justice Canada, and has been used in all five Whitehorse courtrooms since April 2001. Videoconferencing was first used to receive testimony from witnesses in southern Canada in criminal proceedings, but has also been used in civil suits and child

protection hearings. While it was initially envisioned that videoconferencing would be used to examine expert and RCMP witnesses, lay witnesses have also given testimony by videoconferencing. It has generally been well accepted. It is also used to provide interpreter services (interpreter assisted from southern Canada).

Article 3: Equal rights of men and women

762. Of the Yukon's 18 elected Members of Legislative Assembly (MLAs), three are women. Each woman is a member of a different political party. One woman is a Cabinet minister.

763. The Yukon Women's Directorate's mandate is to work towards the legal, social and economic equality of women, to offer Gender Inclusive Analysis of all government policies and legislation, public education on issues related to women's concerns, as well as collaborating with women's organizations.

764. In the spring of 2002, changes were made to shift the responsibility for women's issues by making the Women's Directorate a branch of a department instead of it being an independent department. Following a change in government, and after consultations with women's organizations, the Women's Directorate was reinstated as an independent department.

765. With regard to significant new measures that have been taken recently to combat systemic barriers to the full participation of women in Canada's civil and political life the Yukon notes that the Federal/Provincial/Territorial Status of Women Ministers produced a business-case document and brochure to encourage employers to recruiting and retaining women in the workplace. Entitled "Workplaces that Work: Creating a Workplace Culture that Attracts, Retains, and Promotes Women" (September, 2003). The document is being used by the Yukon Government (among other provincial governments) to work with high growth industry employers that have a low percentage of female employees, to encourage changes to workplace culture in order to retain diverse, and talented female workforce.

766. In 2002, the *Reinstatement of Spousal Benefits Act* was passed. This Act removed a provision in prior worker's compensation legislation that was inconsistent with the *Canadian Charter of Rights and Freedoms*. The new legislation restored compensation pension benefits to spouses who had remarried and whose former spouse had suffered a work-related fatality.

Article 6: Right to life

767. In 2003, the Pioneer Utility Grant, referred to in Canada's Fourth Report, was increased. Each subsequent year this Grant will be increased by the annual rate of inflation.

768. In 2003, the Yukon Government introduced and passed the *Decision Making, Support and Protection to Adults Act*. The purpose of the adult protection and decision making legislation is to provide support to people who have diminished mental capability and to

assist them in making day to day choices and other decisions in their lives. It also serves to protect vulnerable adults from abuse and neglect. This Act is expected to be proclaimed in 2004-05.

769. The Whitehorse Planning Group on Homelessness was formed in 2000 to implement the federal homelessness initiative in Whitehorse. The Group reviews proposals from local organizations for addressing homelessness in Whitehorse. Current Planning Group members include representatives from one crown corporation and three Yukon government departments: Yukon Housing Corporation, Health and Social Services, Education, Justice. Other members of the Planning Group include the City of Whitehorse, Human Resources Development Canada, Canada Mortgage & Housing Corporation, RCMP, Anti Poverty Coalition, Fetal Alcohol Syndrome Society of Yukon, Yukon Women's Aboriginal Council, Salvation Army, Whitehorse Christian Ministerial Association, Yukon Family Services Association, Second Opinion Society.

Fetal Alcohol Syndrome (FAS)

770. Sandra and Sterling Clarren, two expert physicians in the field of Fetal Alcohol Syndrome, were keynote speakers at the Prairie Northern Pacific Partnership Conference on FAS held in Whitehorse, Yukon on May 8, 2002. More than 500 parents, professionals and community agency representatives from across Canada and Alaska attended. The conference theme was "A Lifetime of Solutions" and focused on a continuum of services and support for individuals affected by FAS and their families.

771. The partnership includes the governments of Manitoba, Saskatchewan, Alberta, Nunavut, the Northwest Territories, Yukon and, most recently, British Columbia. Members work together to develop common strategies to prevent FAS and support youth and families affected by it. Each year the partnership hosts a conference and technical symposium.

772. In October 2000, new regulations to the *Yukon's Public Health Act* were established to allow the Yukon to track the number of people in the territory with fetal alcohol syndrome (FAS). All physicians must report diagnoses of FAS to a central registry to assist in targeting prevention, treatment and support programs. Doctors were provided with copies of the diagnostic guidelines for FAS recommended by the Yukon's medical officer of health.

Article 7: Protection against torture

773. In *R. v. Rathburn (2004)*,[73] the Yukon Territorial Court referred to Articles 7 and 10 of the *Covenant* and concluded that the treatment of Mr. Rathburn by the Yukon Correctional authorities by placing him in Segregation 1 or "the hole" for an extended period of time while on consent remand represents a violation of international norms in the circumstances of the case. The psychiatric assessment indicates that his continued placement in Segregation 1 would likely exacerbate his medical condition.

[73] *R. v. Rathburn*, [2004] Y.J. No. 26.

774. The Yukon Department of Justice has no other secure facility to place psychiatric inmates who are acting out. Segregation 1 is currently the most suitable place because it has camera surveillance; however, the Department of Justice is looking at options for ways to properly house suspected or confirmed mentally disordered accused. The Whitehorse Hospital does not have a secure psychiatric facility.

Article 10: Treatment of persons deprived of liberty

775. All new corrections staff receive training about the constitutional rights of offenders to ensure offenders have their freedoms restricted as minimally as possible in order to carry out the sentences of the courts. Policy and procedures rules are in place regarding use of force by staff. Adherence to these policies and procedures is strictly enforced.

776. Upon admission to the Yukon's correctional centre located in Whitehorse, inmates receive a handbook that describes all their rights and responsibilities. There is an inmate grievance system where inmates can complain if they believe they are receiving unfair or improper treatment by staff. Inmates have free access to the Ombudsman for the Yukon.

Article 14: Fair trial rights

777. All provinces and territories were required to establish an independent Judicial Compensation Commission as a result of a 1997 Supreme Court of Canada decision. The Yukon Judicial Compensation Commission is established under the *Territorial Court Act* and meets every three years. The Commission is an impartial, independent body, charged with making decision regarding salaries, pensions, allowances, benefits and other related matters pertaining to the remuneration and compensation provided for Territorial Court judges and justices of the peace. This Commission met in 1998 and 2001. The next Commission will meet in 2004.

778. The *Youth Criminal Justice Act* (YCJA) came into effect on April 1, 2003. Implementation has proceeded smoothly in the Yukon, with no public concerns and no significant sentencing or service impacts. The Ministers of Justice and Health and Social Services have met with the coordinators of the Community Justice Committees on this issue. Seven of nine community justice organizations in the Yukon have requested, and been granted, interim authorization to offer extrajudicial sanctions programs for youth to March 31, 2004, pending the development of guidelines in consultation with the Yukon government.

Article 24: Rights of the child

779. In October 2003, the Government of Yukon reached agreement with Yukon First Nation chiefs regarding a partnership process to develop new Yukon legislation regarding children. The Yukon Government will be conducting a consultation and review of the *Children's Act* over the next two years.

Article 27: Religious, cultural and linguistic rights

780. In January 2002, the Yukon and Canada signed Final and Self-Government Agreements with the Ta'an Kwachan Council, the eighth of 14 Yukon First Nations to finalize their land claim negotiations and enter into a modern-day treaty with the federal and territorial governments.

781. On March 31, 2002, the Yukon signed Memorandums of Understanding with four Yukon First Nations and the Government of Canada that indicated the end of substantive negotiations for their land claim and self-government negotiations pursuant to the Umbrella Final Agreement. The four First Nations are Kluane First Nation, White River First Nation, Carcross/Tagish First Nation and Kwanlin Dun First Nation.

782. At December 31, 2003, the Kluane First Nation had ratified their Final and Self-Government Agreements, which were scheduled to become effective on Feburary 2, 2004. For Carcross/Tagish and Kwanlin Dun, technical and legal drafting were concluded in October with the next step being ratification by the citizens of each First Nation, scheduled for spring 2004. Technical and legal drafting for White River First Nation had not yet been concluded by December 2003.

783. In May 2003, the Government of Yukon entered into a bilateral economic agreement, in the absence of a land claim agreement, with the Kaska First Nations involving the Ross River Dena Council and the Liard First Nation.

784. Yukon entered into an agreement with Canada a two-year extension of the Canada-Yukon Cooperation Agreement on the Development and Enhancement of Aboriginal Languages, to end March 31, 2005.

785. In October 2003, the Government of Yukon entered into Consultation Protocols with the eight self-governing Yukon First Nations, which outline procedures to be followed for consultation obligations under the Final and Self-Government Agreements.

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